

Committee: Cabinet	Date: 4 February, 2015	Classification: Unrestricted	Agenda Item 5.1
Report of: Service Head, Democratic Services Originating Officer: David Knight, Democratic Services		Title: Cabinet Decision Called In: Rights of Light - City Pride Development & Island Point Development Ward: Canary Wharf & Island Garden	

1. SUMMARY

- 1.1 The Rights of Light - City Pride Development & Island Point Development” was considered by the Mayor in Cabinet on 7 January, 2015 and was “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. DECISION OF THE OVERVIEW AND SCRUTINY COMMITTEE

2.1 The Overview and Scrutiny Committee:

1. Considered the contents of the attached report, the Mayor in Cabinet’s decision (provisional, subject to Call In) and the information provided by officers; and
2. Agreed that the decision be referred back to the Mayor and Cabinet for reconsideration with recommendations as set out in this report.

3. RECOMMENDATIONS

- 3.1 That the Mayor and Cabinet notes and comments on the matters set out in this report

Local Government Act, 1972 Section 100D (As amended)

List of “Background Papers” used in the preparation of this report

Brief description of “background paper”

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

Overview and Scrutiny Committee
Agenda 6th January, 2015.

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4. THE MAYOR IN CABINET'S PROVISIONAL DECISION

4.1 The Mayor in Cabinet's decision was published on 9th January, 2015.

- 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.

5. THE 'CALL IN' REQUISITION

5.1 The Call-in requisition signed by the five Councillors listed above gave the following reasons 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.

5.1.2 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]

5.1.3 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.

5.1.4 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.

6. ALTERNATIVE ACTION PROPOSED

6.1 The Call-in Councillors proposed the following alternative course of action:

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

7. CONSIDERATION OF THE "CALL IN"

7.1 In addition to the business papers presented to the Overview and Scrutiny Committee, the Committee considered:

1. The views and comments made by Councillor Candida Ronald in presenting the call-in;
2. The information provided by Councillor Rabina Khan;
3. The information provided by Jackie Odunoye (Head of Strategy Regeneration & Sustainability) and Monju Ali (Projects Officer - Housing Regeneration)

4. Representations made by Marcus Bate - Pinsent Masons LLP; Peter Exton - Tower Hamlets Community Housing and Jerome Webb - Chalegrove Properties.

7.2 Councillor Candida Ronald gave a presentation to the Committee outlining the reasons for the Call In and the concerns highlighted. Councillor Ronald then responded to questions from the Committee.

7.3 Councillor Rabina Khan and Jackie Odunoye responded to the concerns raised. Their responses to questions raised are summarised below:

- Noted that such powers would only be used so as to overcome key impediments to a scheme that is intended to address housing needs and to bring improved social and economic wellbeing to a particular area (e.g. the 70 shared ownership and 131 rented properties in these schemes). In addition, in any given development the homes built will then go onto the common housing register and residents would be able to bid for these properties.
- Was advised that the statutory objective which underlies Section 237 of the 1990 Act is that, provided that work is done in accordance with planning permission, and subject to payment of compensation, a Local Authority should be permitted to develop its land in the manner in which it, acting bona fide, considers will best serve the public interest. To that end, it is recognised that a local authority should be permitted to interfere with third party rights.
- Was informed that schemes such as City Pride and Island Point will help to reduce the numbers of homeless families in Tower Hamlets as well as addressing the complex health/medical needs of these families.
- Noted that all the residents affected by these schemes have been written to by the Council and have had their "Rights to Light" position carefully explained.
- Noted that the decision to use of Section 237 of the Town and Country Planning Act 1990 was not taken lightly and was made so as to take control of the process for the benefit of the Borough as it was considered that the development would not go ahead without the use of Section 237.

8. PROPOSAL

8.1 As a result of a full and wide ranging discussion on this report the Committee

RESOLVED that:

The Mayor agrees that there should be no use of Section 237 of the Town and Country Planning Act 1990 in the London Borough of Tower Hamlets until there is a clear policy in place with regard to it use.