LONDON BOROUGH OF TOWER HAMLETS

MINUTES OF THE OVERVIEW & SCRUTINY COMMITTEE

HELD AT 7.15 P.M. ON TUESDAY, 3 FEBRUARY 2015

COMMITTEE ROOM ONE - TOWN HALL

Members Present:

Councillor Joshua Peck (Chair)
Councillor John Pierce (Vice-Chair)
Councillor Asma Begum
Councillor Denise Jones
Councillor Dave Chesterton
Councillor Muhammad Ansar Mustaquim

Councillor Andrew Wood (Substitute for Councillor Peter Golds)

Co-opted Members Present:

Victoria Ekubia	(Roman Catholic Church Representative)
Dr Phillip Rice	(Church of England Representative)
Nozrul Mustafa	(Parent Governor Representative)
Rev James Olanipekun	(Parent Governor Representative)

Other Councillors Present:

Councillor Ohid Ahmed	(Cabinet Member for Community Safety)
Councillor Rabina Khan	(Cabinet Member for Housing and Development)
Cllr Candida Ronald	(Representing the Call-In Councillors)

Apologies:

The Mayor Lutfur Rahman
Councillor Peter Golds
Councillor Mahbub Alam
Councillor Abjol Miah

Guests:

Chief Superintendent	Andrew Ewing - Police Borough Commander
Marcus Bate	Pinsent Masons LLP
Peter Exton	Tower Hamlets Community Housing
Jerome Webb	Chalegrove Properties.

Officers Present:

Monju Ali	(Project Officer - (Projects Officer - Housing Regeneration)
Emily Fieran-Reed	(Head of Community Safety Partnership Domestic Violence & Hate Crime)
David Galpin	(Service Head, Legal Services, Law Probity & Governance)
Kevin Kewin	(Service Manager, Strategy & Performance)
David Knight	(Senior Democratic Services Officer)
Jackie Odunoye	(Head of Strategy Regeneration & Sustainability)
Louise Russell	(Service Head Corporate Strategy and Equality, Law Probity & Governance)
John S Williams	(Acting Returning Officer and Service Head, Democratic Services)
Owen Whalley	(Service Head Planning and Building Control, Development & Renewal)

1. APOLOGIES FOR ABSENCE

Apologies for absence had been received from The Mayor Lutfur Rahman; Councillor Peter Golds; Councillor Mahbub Alam and Councillor Abjol Miah

2. DECLARATIONS OF DISCLOSABLE PECUNIARY INTEREST

There were no declarations of disposable pecuniary interest

3. UNRESTRICTED MINUTES

The Chair **Moved** and it was:-

RESOLVED

That the unrestricted minutes of the meeting of the Overview and Scrutiny Committee held on 6th and 19th January, 2015 be approved as a correct record of the proceedings.

In addition, the Committee noted the following:

7.1 Reference from Council – Judicial Review on the Best Value Inspection

The Committee was reminded that whilst it has a right to see written advice relevant to its consideration of the reference from Council, this would not cover advice taken on other matters than just the Secretary of State's decision. The advice on those other matters had been

excluded from the confidential briefing prepared for the Committee and was still subject to legal privilege. Notwithstanding these points O&S Members had indicated that they should have the opportunity to review the written notes of the Counsel's legal advice in its entirety, and the Interim Monitoring Officer had agreed to make this available.

4. REQUESTS TO SUBMIT PETITIONS

Nil items

5. UNRESTRICTED REPORTS 'CALLED IN'

5.1 CALL IN - RIGHTS OF LIGHT - CITY PRIDE DEVELOPMENT & ISLAND POINT DEVELOPMENT

The Committee noted that the Rights of Light - City Pride Development & Island Point Development had been 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.

The Call-in requisition signed by the five Councillors listed above gave the following reasons for the Call-in:

I. 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];

II. 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.

III. That the Mayor fully consider and outline the impact of such a decision on future developments in the borough; and

IV. That the decision on rights of light be left to the courts.

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.

The main points of the discussion maybe summarised as follows:

The Committee:

- Noted that the development included a tall building that would overshadow adjoining properties resulting in an impact upon their quality of life of residents living in those properties.
- Noted that 15 residents have not yet agreed a level of compensation with the developer and that the Council aims to get the correct compensation for these owners.
- Noted that the granting of an injunction does not necessarily preclude the development from going ahead. A court could decide in favour of the development and set levels of compensation for affected landowners (**i.e.** that this particular decision should be left to the courts).
- Noted that it is very important that the justification for exercising such powers is sufficiently robust in order to withstand any legal challenge.
- Was advised that the scheme would have a positive benefit for 400 families by reducing overcrowding and set a new bench mark in social housing
- Noted that Section 237 is only used 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. In addition, 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 “Right to Light” is a form of easement in English law that gives a long-standing owner of a building with windows a right to maintain the level of illumination. The use of such injunctions by owners has become established as a primary remedy over a period of time in the courts to stop such a loss or to decide if the financial payment offered to the owner is considered to be adequate for a particular claim.
- Noted that the Council cannot use its power simply to save the developer money; there must be a clear socio- economic benefit to the

local area. These benefits must be able to be quantified and proved, and be benefits which would disadvantage the Council's objectives if they were lost (i.e. The Council continues to face challenges in meeting the huge demand for affordable housing and attempting to reduce the significant overcrowding that many in the community experience).

- Noted that Section 106 payments cannot be taken into account because these payments are to mitigate the impacts of the development, therefore in essence if the development does not go ahead they will not be required and there is no loss to the locality. Although in practice these payments are hugely beneficial to the Council this is not in itself sufficient.
- Noted that the use of Section 237 of the Town and Country Planning Act 1990 potentially stops injunctions that would otherwise prevent the implementation of schemes that have over-riding social or economic advantages to a particular area and whilst in London primarily its use has been in relation to commercial properties within the City it has also been utilised by other boroughs in residential developments (**e.g.** Hackney; Hammersmith and Fulham and Kensington and Chelsea).
- Noted that the use of Section 237 was not one that had been taken lightly and in relation to City Pride & Island Point Developments it 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.
- 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.
- Expressed concern that whilst these schemes may address social or economic needs for a particular area they will put increased pressure on school places; open space and public transport. In response it was noted that the infrastructure needs will be addressed in the development of these schemes.
- 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 Council was satisfied that there was real risk that if the owners injunct the development it would not go ahead.
- Indicated that it felt that there should be no further use of Section 237 of the Town and Country Planning Act 1990 in the Borough until there is a clear policy in place with regard to it use. Therefore, the Mayor should fully consider and outline the impact of such a decision on any future developments.
- Was concerned that consideration should not only be given to the provision of affordable housing in such schemes but also to the density of developments and the impact that they would have on the skyline in the neighbourhood.
- Wanted to be assured that the Council has required the developer to demonstrate a significant degree of intransigence on the part of those

owners before it would be justified in exercising its powers under Section 227 so as to defeat "rights of light".

As a result of a full and wide ranging discussion on this report the Committee **RESOLVED** to refer the matter back to the Mayor for reconsideration with a recommendation 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 its use.

Action by:
Jackie Odunoye (Head of Strategy Regeneration & Sustainability)

6. SCRUTINY SPOTLIGHT

6.1 MAYOR

The Committee noted that apologies for absence had been received from The Mayor Lutfur Rahman. The Committee was reminded that it had already expressed disappointment that the Mayor has not attended previous meetings and as a result of discussion on the constitutional provisions regarding The Mayors attendance the Committee noted that:

- The Overview and Scrutiny Procedure Rules at Part 4.5 of the Council's Constitution provide that the Overview and Scrutiny Committee, in fulfilling their role, may require the Mayor, another Executive Member, a Councillor or senior officer to attend before the Committee to give account in relation to matters within their remit (Rule 14.1).
- Where any Member or officer is required under this provision to attend the Committee, the Procedure Rules state that at least 15 working days' notice must be given of the meeting; and that notice must state the nature of the item on which the Member/officer is required to attend and whether any papers are required to be produced for the Committee (Rule 14.2).
- The Mayor would be required to attend a "Scrutiny Spotlight'. This would be an opportunity for him to discuss recent performance, future plans and how the culture of the organisation can support the achievement of best value.

Accordingly, the Chair Moved and it was:-

RESOLVED

- That in accordance with Rule 14.2 of the Council's constitution the Mayor is required to attend the meeting of the Overview & Scrutiny Committee for a Mayor's Spotlight session on 3rd March, 2015 to answer questions on recent performance, future plans and how the culture of the organisation can support the achievement of best value.

Action by:
David Knight (Senior Democratic Services Officer)

6.2 POLICE BOROUGH COMMANDER

The Committee heard from the newly appointed Police Borough Commander, Andrew Ewing regarding his policing priorities for Tower Hamlets including the importance of raising public confidence. He then received feedback from Members in a range of areas, including neighbourhood policing, use of 101 'phone line and members' experiences of policing during the 2014 elections. The main points of the discussion may be summarised as follows:

The Committee noted that:

- The Police Service locally in addressing policing priorities for the borough is considering new tactics and technology to address those issues of concerns to residents and to raise public confidence. Also that crime cannot be addressed in isolation and the police service is working with council officers to develop the ongoing harmonious and positive dialogue;
- The changes to the Neighbourhood Policing the Police Service locally will mean that officers will be better able to tackle local issues (**e.g.** address robbery, theft/taking of motor vehicles, criminal damage, burglary and violence with injury);
- The new local policing model will change the shift patterns and provide extra resources for the emergency response teams;
- With regard to the improvement of the ward forums and the strengthening of the relationship between the police service and ward councillors. The Borough Commander indicated that he intended to roll out best practice across the borough and build positive/functional independent advisory groups (**e.g.** develop a partnership using local people, local knowledge residents/councillors/council officers); and
- Work is being done to encourage people to report crimes so that priorities could be developed to address the concerns of the community (**e.g.** addressing anti-social behaviour/establishing community safety surgeries /street drinking/24 hour economy in a proactive and robust fashion).

Action by:
Emily Fieran-Reed (Head of Community Safety Partnership Domestic Violence & Hate Crime)

7. UNRESTRICTED REPORTS FOR CONSIDERATION

7.1 PLANNING FOR THE UK PARLIAMENTARY ELECTION (MAY 2015): UPDATE

The Committee received a report that provided an update on preparations for the General Election in May. The Committee considered staff training, the

development of a local protocol and the importance of a secure email account to allow concerns, including possible fraudulent activity, to be raised. The main points of the discussion on this report are outlined below:

The Committee noted that:

- The election petition case had started on February 2, 2015 at the Royal Courts of Justice and was advised that all of the allegations made by the Petitioners against the Acting Returning Officer and his staff had been withdrawn.
- The role of Acting Returning Officer is politically neutral and that his only objective is to ensure that the election is administered fully in accordance with the law.
- The Acting Returning Officer had been in regular contact with officers of the Electoral Commission concerning the plans for May 2015 and in particular the implementation of the Commission's recommendations in its report about the count in Tower Hamlets of May 2014. The Committee was advised that the Commission's officers had stated that they are satisfied with progress and the plans in place. In addition, Tower Hamlets had again in 2015 been selected by the Electoral Commission as one of the authorities to provide more detailed monitoring of the election planning process in connection with the national Acting Returning Officer performance standards monitoring process. As part of this process the Commission had been provided with the Acting Returning Officer's election planner document and contingency/risk register. These documents set out the key actions and milestones required in the work to prepare for the elections, together with identified risks and contingency measures to address these.
- In recent years the Acting Returning Officer had arranged for delivery of postal votes by Royal Mail in preference to Council-employed canvassers and that in consultation with the Royal Mail consideration was being given to the method of delivery of postal vote packs so as to ensure the maximum security of the process.
- The Acting Returning Officer intends once again to put in place a dedicated and secure e-mail account for any complaints or concerns about possible fraudulent activity. Any messages to that secure account will be processed within a stated period and if there is any suggestion that an offence may have been committed it will be referred without delay to the Police Single Point of Contact. In addition, the electorate will be made aware that this dedicated account is a secure one.
- If there is any increase in requests for postal votes from a given area they will be investigated and the Acting Returning Officer and his Team who have the capacity to address any such concerns.
- With regard to the combined elections in May 2014, the Acting Returning Officer and the Metropolitan Police, with the support of the Electoral Commission, published a Local Protocol setting out a range of measures designed to ensure the integrity of the elections and respond to any allegations of fraud or malpractice in a timely and

effective fashion. The local political parties had been invited to sign up to the protocol, which included a number of commitments in relation to standards of conduct by candidates, campaigners and others.
- With regard to the collection of postal votes and voter impersonation training is to be undertaken for those LBTH and MPS officers working in polling stations looking at how to address challenges and situations that might arise on the day.
- The Electoral Commission's new code of conduct refers to collecting postal votes for other voters.
- Impersonation is an offence and Acting Returning Officer and his Team are looking at ways to minimise that possibility.

Action by:
John S Williams (Acting Returning Officer and Service Head, Democratic Services)

7.2 APPROVAL OF THE LONDON BOROUGH OF TOWER HAMLETS' COMMUNITY INFRASTRUCTURE LEVY (CIL) CHARGING SCHEDULE

The Committee discussed the proposed Charging Schedule prior to its submission to Full Council on 25th February, 2015, and considered the benefits of reviewing the Schedule following its operation. The Committee raised its concerns about the need for greater transparency in the allocation of Section 106, and CIL in the future. It was suggested that the allocation of Section 106 and CIL should be an area covered within the Best Value Improvement Plans. The main points of the discussion on this report are summarised as follows:

The Committee:

- Expressed concerns about the transparency of the CIL and wanted clarification as to where people get information as to how the process works.
- Noted the risks of not implementing a CIL in the Borough would be likely to result in difficulties with securing the appropriate funding to help pay for much needed infrastructure, to accompany the continuing regeneration and growth of the Borough. However, there was concern at how the funding from Section 106 had been allocated in the past and the Committee wished to receive assurances that there will be better engagement of Members in the process. In response it was noted that the purpose of the report was to seek the Full Councils agreement to the adoption of the CIL and then work will be undertaken on the governance structure for consideration by the Executive. In addition, there would be an annual review of the Charging Schedule to establish whether an update is necessary and will allow the Council to re-commence the rate setting process at the most appropriate time, in the context of the wider market.

Accordingly, the Chair moved and it was:-

RESOLVED

1. To endorse the proposed course of action that the report should be put before Cabinet and Full Council for the adoption of a CIL in Tower Hamlets; and

2. To inform the Commissioners on the concerns about the allocation of S106 and CIL and suggested that they might be covered within the Best Value Improvement Plans.

Action by:
Owen Whalley (Service Head Planning and Building Control, Development & Renewal)

7.3 UPDATE ON BEST VALUE IMPROVEMENT PLANNING

The Committee considered a report that outlined the Council's response to the Secretary of State's Directions. The Committee noted that an Action Plan in relation to Procurement had been developed and already agreed, and that work was underway on Actions Plans in relation to Grants, Property and Publicity. The main points of the discussion on this report may be summarised as follows:

The Committee:

- Was reminded that at its meeting on 6th January, 2015 it had been agreed, in considering a referral from Council, in relation to the PWC inspection of the Council which gave rise to the Secretary of State's Directions, that it wished its future work in relation to the issues raised in the motion to be focussed on considering and scrutinising the Council's plans for improvement.
- Noted that the specific Direction for the Council relating to improvement and action planning is contained in Direction 1: 'Within 3 months from the date of these Directions [i.e. 17 March 2015] to draw up and agree with the Commissioners a strategy and action plan for securing the Authority's compliance with its best value duty (to include as appropriate complying with the specific directions and to put in place robust and transparent arrangements for grant decisions), and to submit this to the Secretary of State.'
- Was informed that the best value duty in Section 3 of the Local Government Act 1999 is drafted in broad terms. It requires a local authority "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". Previous legislation and statutory guidance had been clear that this would need to be demonstrated by processes including the production of a Best Value Performance Plan, continuous improvement against Best Value Performance Indicators and a programme of periodic best value reviews of particular services or cross-cutting activities. This guidance is no longer in place and since 2010 authorities have been given

considerable discretion in how they meet the best value duty, with the only statutory guidance remaining being 2 pages long and focusing almost solely on the duty to consult in achieving this duty, and in particular the need to consult with the voluntary and community sector.

- Observed that the authority had commenced discussions with the Commissioners about the nature of strategy and action plan they would expect to see and how broad its scope would be given the PWC inspection considered only four key areas of the Council's business: grants, publicity, procurement of contracts and property.
- In considering the Council's response to the Secretary of State's Directions noted that an Action Plan in relation to Procurement had been agreed, and work was underway on Actions Plans in relation to Grants, Property and Publicity.
- Requested that it should receive drafts of the four Plans and bi-annual updates on their delivery.
- Noted the Best Value Improvement Plans will consider the culture of the Council and how it might be changed so as to address the best value duty. The Committee also asked that the Head of Paid Service and Service Head for Human Resources be invited to attend O&S so as to discuss the Council's plans for improvement in light of the Inspection's findings
- Indicated that it would be inviting the Commissioners to attend a future meeting and that it wished to see the draft Improvement Plans prior to their agreement.

Accordingly, the Chair Moved and it was:-

RESOLVED:

1. To invite the Commissioners to attend a future O&S Committee;
2. To invite the Head of Paid Service and Service Head for Human Resources to attend O&S so as to discuss the Council's plans for improvement in relation to organisational culture in light of the Inspection's findings; and
3. To request that O&S consider the draft Best Value Improvement Plans prior to their agreement.

Action by:
Louise Russell (Service Head Corporate Strategy and Equality, Law Probity & Governance)

8. VERBAL UPDATES FROM SCRUTINY LEADS

The Committee received and noted the following brief verbal updates regarding the work of the Scrutiny Leads.

Scrutiny Reviews:

- Effect of literacy and numeracy levels on outcomes for children and their families (Cllr Denise Jones, Labour) a session was to be undertaken on 13th February, 2015;

Challenge sessions:

- Improving cycling safety (Cllr John Pierce, Labour) session had been undertaken;
- Member involvement in S106, and the quality of S106-funded social housing (Cllr Dave Chesterton, Labour) session had been undertaken; and
- Specification and management of council contracts (using Veolia as a case study) (Cllr Abjol Miah, Tower Hamlets First) session had been undertaken.

9. PRE-DECISION SCRUTINY OF UNRESTRICTED CABINET PAPERS

The following pre-decision questions were submitted to the Mayor in Cabinet 4th February, 2014.

Agenda Item 6.2 Tower Hamlets Multi-Faith Burial Ground

Para 3.13: An alternative site has been identified within the M25 which can be accessed by car in approximately 25 minutes from the centre of the borough. The site is a purpose built and thoughtfully designed cemetery.

Question: What is the time it would take to access the site by public transport and how far is the nearest public transport link?

Para 3.18: It is estimated that the 3 acre plot of land would be capable of taking 3,000 grave plots.

Question: How long will the 3,000 grave plots last?

Para 3.20 Bullet Point No. 7: To maintain landscaping and grounds in accordance with reasonable levels of standards as evidenced by the industry practice but to include regular cutting of grass during the summer months of intervals of no less than two months.

Question: Is an interval of no less than two months an industry standard for cutting grass?

Agenda Item 8.1 Borough wide 20mph Limit

Comment: Whilst O&S feels that this scheme is a good idea, concerns were raised that as the Police have indicated that they do not have the resources to enforce the 20 mph limit. Therefore, to be a success the scheme would require a change in attitude by road users. To ensure that the new speed limit is widely understood and adhered to and so becomes self-policing.

Question: Would the Mayor give consideration to the funding of a behavioural change campaign for road users?

The responses received are set out in **Appendix 1**

Action by:
David Knight (Senior Democratic Services Officer)

10. ANY OTHER UNRESTRICTED BUSINESS WHICH THE CHAIR CONSIDERS TO BE URGENT

Nil items

11. EXCLUSION OF THE PRESS AND PUBLIC

The Chair **Moved** and it was: -

Resolved:

That in accordance with the provisions of Section 100A of the Local Government Act 1972, as amended by the Local Government (Access to Information) Act 1985, the press and public be excluded from the remainder of the meeting for the consideration of the Section Two business on the grounds that it contained information defined as exempt or confidential in Part 1 of Schedule 12A to the Local Government, Act 1972.

SUMMARY OF EXEMPT PROCEEDINGS

12. EXEMPT/CONFIDENTIAL MINUTES

None.

13. EXEMPT/ CONFIDENTIAL REPORTS 'CALLED IN'

None.

14. PRE-DECISION SCRUTINY OF EXEMPT/ CONFIDENTIAL) CABINET PAPERS

None.

15. ANY OTHER EXEMPT/ CONFIDENTIAL BUSINESS THAT THE CHAIR CONSIDERS URGENT

The Committee noted that:

The Chair had discussed Poplar Town Hall with the Commissioners and that his report would be forthcoming before the end of the municipal year.

The meeting ended at 10.00 p.m.

Chair, Councillor Joshua Peck
Overview & Scrutiny Committee

Appendix 1

PRE-DECISION SCRUTINY OF UNRESTRICTED CABINET PAPERS

Responses received.

Agenda Item 6.2 Tower Hamlets Multi-Faith Burial Ground

Question: What is the time it would take to access the site by public transport and how far is the nearest public transport link?

Response: It will take just over an hour from the centre of Tower Hamlets via public transport. The nearest bus stop is only a short walk away from the site, with the nearest train station a short bus ride away.

Question: How long will the 3,000 grave plots last?

Response: It is anticipated that, at a rate of 200 burials per year, the plots will last 15 years.

Question: Is an interval of no less than two months an industry standard for cutting grass?

Response: Yes, this is an industry standard.

Agenda Item 8.1 Borough wide 20mph Limit

Question: Would the Mayor give consideration to the funding of a behavioural change campaign for road users.

Response: Section 6 of the report refers to the need for further “awareness raising” to continue throughout the experimental period. This would not just highlight the new speed restrictions, but would also aim to continue to encourage behavioural change, complementing the work already delivered on cycle training, road safety education, safer urban driving and travel awareness. This is funded through the TfL LIP “Supporting Measures “programme to the tune of £340k for 2015/16.

Such a programme could include actions such as articles in the local press from Twenty’s Plenty and Living Streets campaign groups explaining the benefits of slower speeds, community volunteers or schools doing speed surveys and “enforcement” campaigns and highly visible safety initiatives with the MPS.