


<b>Commissioner Decision Report</b> 24 <sup>th</sup> May 2106	 <b>TOWER HAMLETS</b>
<b>Report of:</b> Aman Dalvi - Corporate Director of Development & Renewal	<b>Classification:</b> Unrestricted
<b>Stepney City Farm Accessibility Improvement Works</b>	

<b>Originating Officer(s)</b>	Jonathan Taylor
<b>Wards affected</b>	Stepney
<b>Key Decision?</b>	No
<b>Community Plan Theme</b>	<b>A Great Place to Live</b>

### Executive Summary

This report relates to the release of £36,000 to Stepney City Farm to deliver accessibility improvement works at the farm. The proposed works will meet an identified need to upgrade the pathways to ensure inclusivity for all areas of the farm. The improvements will open up areas of the farm for improved usage and allow mobility for wheelchairs and pushchairs around the whole site. This will enable the Farm to provide an improved service to the local community, primarily school children and volunteers, but also the elderly and disabled who utilise the farm services.

Project funding for the improvement works has been secured through a s106 contribution associated with the nearby Ocean Estate Redevelopment. The proposals comply with the terms of Paragraph 1, Schedule Eighteen of the s106 agreement relating to the Ocean Estate redevelopment (planning ref PA/09/02584 and PA/09/02585 and PA/11/01294) as varied on 6th February 2014 (ref PA/13/00730).

The terms of the s106 agreement required the projects to be identified and agreed with the Developer, with the scope of the 'improvement works to Ben Johnson Road or other improvement works in the vicinity of the Ocean Estate'. Approval for the projects, including up to £121,000 for improvement works at Stepney City Farm, was agreed in September 2014 and the s106 contribution received by the Council October 2014.

The £36,000 proposed funding is split over two parts:

- i: Accessibility Audit to identify the improvement works - £1,080; and
- ii: Delivery of Works - £34,920.

The Planning Contributions Overview Panel approved the funding of the Accessibility Audit (£1,080) in February 2015 and Accessibility Improvement Works (£34,920) in October 2015.

**Recommendations:**

The Commissioners are recommended to:

1. Approve the grant funding of £36,000 to Stepney City Farm to improve the pathways and surfaces around the farm and ensure the community facility is accessible to all.

## **1. REASONS FOR THE DECISIONS**

- 1.1 Stepney City Farm is a working farm and community meeting place and provides opportunities for children and adults to meet farm animals, learn how to grow food and try out arts and crafts. The farm also hosts school groups four days a week during term time as well as activities during the school holidays. Local residents formed the charity Stepney City Farm in 2009 and lease the land from the Council. The farm is on land owned by the Council as trustee for the King George's Fields, Mile End charity.
- 1.2 The proposed accessibility improvements will meet an identified need to improve access around the farm and enable the farm to provide an improved service to the local community, primarily school children and volunteers, but also the elderly and disabled who utilise the farm services. The grant funding is to be supplemented with additional funding secured by Stepney City Farm to deliver site wide pathway and drainage improvements.
- 1.3 The approval of this report, which includes funding for improvements at Stepney City Farm, will provide the following benefits:
- The release of £36,000 from the s.106 contribution provides Stepney City Farm with the funding it requires for the accessibility improvements
  - It will enable Stepney City Farm to access additional funding from Veolia Environmental Trust (Veolia funding criteria requires at least 20% of project funding to be already secured)
  - It will allow the Farm the ability to expand the tour programme and to be fully inclusive to the whole community
  - The improvements will reduce the Farm's on-going maintenance expenditure as the current wood chip pathways require regular top up
  - It will ensure that the finances are spent in accordance with the s106 obligation and deliver projects as agreed with the s106 contributors
- 1.4 The project has been identified and agreed with the s106 contributors, prior to release of the funds to Tower Hamlets in accordance with the s106 agreement.
- 1.5 The project was approved by the Planning Contributions Overview Panel (PCOP) in February 2015 (Accessibility Audit) and in October 2015 (Accessibility works). The Project Initiation Documents (PID) are presented in Appendix A – Accessibility Audit PID, and Appendix B – Accessibility Improvement Works PID.

## **2. ALTERNATIVE OPTIONS**

- 2.1 The finances have been secured through the s106 process with the projects identified and agreed with the s106 contributors prior to release of the finances to the Council, with up to £121,000 ring-fenced for improvement works to the farm.
- 2.2 The projects have been agreed with Stepney City Farm and based on their needs £36,000 of the £121,000 has been identified for the accessibility works.
- 2.3 The total cost of delivering the accessibility improvements is anticipated to be £55,000, with additional funding requirements being sought by Stepney City Farm from the Veolia Environmental Trust.
- 2.4 Whilst Stepney City Farm are confident of securing the finances from the Veolia Environmental Trust, and the proposals meet the Veolia Environmental Trust eligibility criteria, should the Veolia Environmental Trust bid be unsuccessful the farm would be responsible for seeking alternative funding options.

## **3. DETAILS OF REPORT**

- 3.1 Stepney City Farm is a working farm and community meeting place and provides children and adults with an opportunity to meet farm animals, learn how to grow food and try out arts and crafts. The farm also hosts school groups four days a week during term time as well as activities during the school holidays.
- 3.2 The Farm provides a valuable outdoor experience for visitors of all backgrounds and ages. The access improvement works that are proposed will deliver improvements for the farm to be inclusive and accommodate all disabled people as well as those with children and pushing prams or buggies.
- 3.3 The existing situation at the farm presents difficulties in the terrain the accessibility improvement works would include:
  - removal of the current wood chip pathway (currently topped up regularly to a depth of approximately 6 inches)
  - installation of a sub-base for new path surface
  - drainage improvement works to identified areas of the site
  - rubber bonded mulch surface (50mm thick)
  - level improvements from the kerbs to pathways

- 3.4 The £36,000 proposed for the accessibility improvement works is to be funded through s106 contributions. The proposals comply with the terms of Paragraph 1, Schedule Eighteen of the s106 agreement relating to the Ocean Estate redevelopment (planning ref PA/09/02584 and PA/09/02585 and PA/11/01294) as varied on 6th February 2014 (ref PA/13/00730).
- 3.5 The variation undertaken in February 2014 was a result of the developer's inability to fulfil the sustainability requirements of the planning permission.
- 3.6 The February 2014 agreement obliged the developer to pay the Council a £250,000 'Ben Johnson Road Contribution' for carrying out Ben Johnson Road Improvement Works: *"improvement works to Ben Johnson Road or other improvement works in the vicinity (within or adjacent to Ocean Estate) to be carried out by the Council in accordance with a scheme to be approved ...in accordance with Schedule 18 of this agreement"*.
- 3.7 Schedule 18 required the Council to prepare a proposed scheme and submit it for approval by the s.106 Contributors. The financial contribution was paid to the Council in two £125,000 equal shares from each developer on approval of the proposed scheme, which reflected the intentions of all parties for the contribution to be used towards sustainability projects. The £36,000 funding for the Stepney City Farm accessibility improvement works will be drawn from the £250,000 contribution.
- 3.8 The proposed scheme was approved by both parties in September 2014 and the Council received payment totalling £250,000 in two £125,000 instalments from the developers on 15/10/2014 and 31/10/2014.
- 3.9 The September 2014 approved scheme included up to £121,000 being ring-fenced for improvement works to the farm.
- 3.10 The initial plans for the improvement works to the Farm included £11,000 allocated to accessibility improvements (Accessible pathway to provide an accessible route around the farm and visitor information signs about the animals to improve visitor experience), of which £900 (+vat) was to fund the accessibility audit to inform the works to be undertaken.
- 3.11 In order to deliver comprehensive improvement works to the pathways, as identified in the accessibility audit, the £25,000 initially proposed for renewable energy technologies has been reallocated to accessibility improvements. The renewable energy proposals are not considered feasible due to recent Government (Department for Energy and Climate Change) changes to renewable energy subsidies (FiT subsidy reduction of 87% from 1st January 2016) which have resulted in the delivery of renewable energy on site not being cost-effective.
- 3.12 Therefore the total budget available for the accessibility improvement works from the s106 contribution is £36,000. The cost of delivering the accessibility improvements is anticipated to be £55,000, with additional funding

requirements being sought by Stepney City Farm from the Veolia Environmental Trust.

- 3.13 The £36,000 funding is split over two parts: Accessibility Audit - £1,080; Delivery of Works - £34,920. The Planning Contributions Overview Panel (PCOP), following legal review and development of a Project Initiation Document (PID), approved the funding of the Accessibility Audit (£1,080) in February 2015 and Accessibility works (£34,920) in October 2015.
- 3.14 The need to provide the accessibility improvements was identified and agreed with the s.106 contributors prior to the funds being released to the Council. An outline of proposed works was submitted to the parties for agreement and approval was granted in September 2014 with the s106 contribution received by the Council in October 2014.

#### **4. COMMENTS OF THE CHIEF FINANCE OFFICER**

- 4.1 This report seeks the approval of the Commissioners to release funding of £36,000 of specific Section 106 resources to Stepney City Farm as a contribution towards works to improve accessibility to the site. The Section 106 contribution will be used to part fund the works, with additional financing being sought from the Veolia Environmental Trust.
- 4.2 This proposal will utilise an element of the Section 106 resources that have been secured in relation to a specific development on the Ocean Estate. The developers have met their Section 106 obligations and as a result resources totalling £250,000 are held by the Council to be applied in accordance with the terms of the Section 106 agreement. As part of the process, the proposed use of resources has been approved by the Section 106 contributors.
- 4.3 At the Decision Making Meeting held on 20<sup>th</sup> May 2015, the Commissioners approved an allocation of £50,000 of these ringfenced Section 106 resources to provide Stepney City Farm with a match funding contribution to enable it to secure resources from the Big Lottery to develop an Ecopod classroom on the site.
- 4.3 As a Section 106 payment in respect of a capital project, in order that the funds can be released this scheme will need to be included within the capital programme in accordance with the Council's Financial Regulations. As the sum is below the threshold of £250,000 delegated to the Corporate Director, if the proposal is approved, the capital estimate can be adopted via a Corporate Director's Action.

#### **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. A contract for services is not a grant and therefore, an arrangement which is classified as a contract for services would be outside the remit of the power conferred upon the commissioners to approve.

- 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 provide this payment. Therefore the payment is discretionary and is a grant.
- 5.4 The power of the commissioners to make decisions in relation to grants arises from directions made by the Secretary of State on 17 December 2014 pursuant to powers under sections 15(5) and 15(6) of the Local Government Act 1999 (the Directions). Paragraph 4(ii) and Annex B of the Directions together provide that, until 31<sup>st</sup> March 2017, the Council's functions in relation to grants will be exercised by appointed Commissioners, acting jointly or severally. This is subject to an exception in relation to grants made under section 24 of the Housing Grants, Construction and Regeneration Act 1996, for the purposes of section 23 of that Act (disabled facilities grant).
- 5.5 To the extent that the Commissioners are exercising powers which would otherwise have been the Council's, there is a need to ensure that the Council has the power to make the grant in question.
- 5.6 The payment of the grant is 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. There are no such restrictions and limitations and the general power of competence supports the payment of the grant.
- 5.7 In fact, the payment of the grant support the public sector Equality Duty under section 149 of the Equalities Act 2010 ('the 2010 Act'). This duty requires public authorities, when carrying out their public functions, to have due regard to eliminating discrimination, advancing equality of opportunity and fostering good relations between different groups. One of the protected characteristics is disability. It is noted that Stepney City Farm hosts school groups four days a week during term time as well as activities during the school holidays. The Council has a variety of education functions and pursuant to section 88 of the 2010 Act the Council has a duty to develop accessibility strategies to facilitate better access to education for disabled pupils. The payment of this grant supports this duty.
- 5.8 The Council has a duty under 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. This is referred to as the Council's best value duty. Best Value considerations have also been addressed in paragraph 12 of the report.

- 5.9 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.
- 5.10 The proposed grant falls under the *de minimis* threshold for the purposes of European restrictions on State aid.
- 5.11 As stated in 5.7 above, 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. The proposed accessibility improvements will meet an identified need at the Farm to improve inclusivity and accommodate all disabled people as well as those with children and pushing prams or buggies. This will enable the Farm to provide an improved service to the local community, school children and volunteers, but also the elderly and disabled who utilise the farm services.
- 6.2. The proposals would not adversely affect people with protected characteristics and would enhance the current facility for the entire community to enjoy and benefit.

## **7. BEST VALUE (BV) IMPLICATIONS**

- 7.1 The delivery of this project ensures the Council meets its s106 obligations and spends funds in accordance with the agreement.
- 7.2 The funding enables Stepney City Farm to access additional funding from Veolia Environmental Trust (Veolia funding criteria requires at least 20% of project funding to be already secured). This is considered to offer best value to the Council as it is both an effective and economic way to deliver site wide improvement by allowing access to additional funding.



## **8. SUSTAINABLE ACTION FOR A GREENER ENVIRONMENT**

- 8.1 The new pathway surface to be delivered at the Farm will be made of 100% recycled rubber and offers a sustainable choice with low carbon footprint. The rubber is also porous and will help deliver improvements to drainage at the farm.

## **9. RISK MANAGEMENT IMPLICATIONS**

- 9.1 There is a risk that if the project is not approved, the benefits identified in sections 1 and 3 will not be realised to the detriment of the local community, visitors and volunteers.
- 9.2 The total cost of delivering the accessibility improvements is anticipated to be £55,000, with additional funding requirements being sought by Stepney City Farm from the Veolia Environmental Trust.
- 9.3 Whilst Stepney City Farm is confident of securing the finances from Veolia as the proposals meet the eligibility criteria, should the Veolia bid be unsuccessful the farm would seek alternative funding options.
- 9.4 Without approval of the project the criteria for accessing additional funding would not be met and the Farm would lose the ability to improve inclusivity at the farm. In addition the Council's s106 obligations would not be met as the finances have been ring-fenced specifically for works at the farm.

## **10. CRIME AND DISORDER REDUCTION IMPLICATIONS**

- 10.1 There are no crime or disorder implications.

## **11. SAFEGUARDING IMPLICATIONS**

- 11.1 The Stepney City Farm is an established community asset and a registered charitable organisation.
- 11.2 There are no safeguarding implications

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## **Linked Reports, Appendices and Background Documents**

### **Linked Report**

- NONE

### **Appendices**

- A - Accessibility Audit Project Initiation Document

- B – Accessibility Improvement Works Project Initiation Document

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

- NONE

**Officer contact details for documents:**

- NONE