


Non-Executive Report of the:  <b>Council</b>  Wednesday 16 November 2022	 <b>TOWER HAMLETS</b>
<b>Report of:</b> Janet Fasan, Director of Legal and Monitoring Officer	<b>Classification:</b> Unrestricted
<b>REPORT UNDER SECTION 5 OF THE LOCAL GOVERNMENT AND HOUSING ACT 1989</b>	

<b>Originating Officer(s)</b>	Janet Fasan, Director of Legal and Monitoring Officer
<b>Wards affected</b>	Stepney Green

### **Special Circumstances Justifying Urgent Consideration**

This report was not available for despatch with the Council agenda as the issue raised has only recently come to light. It is not possible to wait for the next meeting of Council as the report needs to be considered within 21 days of being circulated to Members. This means that if the report is not taken at this meeting then an Extraordinary Meeting of Council would be required.

### **Executive Summary**

Breach of Article 5 of the Town and Country Planning (Mayor of London) Order 2008 – Failure to notify the Mayor of London prior to a decision being issued in respect of an application of Potential Strategic importance.

The application was made by the London Borough of Tower Hamlets, for the redevelopment of a site comprising demolition of existing buildings (including Harriott House, Apsley House, Pattison House, The Redcoat Centre and Redcoat Community Centre) to provide 412 residential units. The application was granted on 21 March 2022, subject to planning obligations being fulfilled. As this was an application of potential strategic importance, the aforementioned Article 5 requires that the Mayor of London is notified prior to any decision being issued. However, no such prior notification was given.

This means that the process did not comply with the legislation and the appropriate action is to seek the quashing of the Decision Notice by Judicial Review.

### **Recommendations:**

The Council is recommended to:

1. To seek the quashing of the Decision Notice issued on 2<sup>nd</sup> November 2022, in respect of planning application PA/21/02703.

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

- 1.1 The Decision Notice was issued without prior notification to the Mayor of London, in breach of Article 5 of the Town and Country Planning (Mayor of London) Order 2008. The Monitoring Officer is required to report to Council on this issue as it is a breach of the legislation and the Decision Notice needs to be quashed.

## **2. ALTERNATIVE OPTIONS**

- 2.1 The alternative action is to revoke the decision but this is not recommended for reasons set out in Section 7 of the report.

## **3. DETAILS OF THE REPORT**

### **The Background**

- 3.1 PA/21/02703 sought permission for the redevelopment of the site comprising demolition of existing buildings (including Harriott House, Apsley House, Pattison House, The Redcoat Centre and Redcoat Community Centre) to provide 412 residential units (Class C3) and 1,192m<sup>2</sup> GIA of community use (Class E (e-f), Class F1 (e-f), Class F.2 (b)) provided across buildings ranging in height from 4-8 storeys, together with associated landscaped communal amenity space, accessible car parking, secure cycle parking spaces and refuse/recycling storage facilities. The applicant is the London Borough of Tower Hamlets

### **The Contravention**

- 3.2 On 21 March 2022 the Council through its Development Committee acting in its statutory function as the local planning authority pursuant to the Town and Country Planning Act (as amended) 1990 resolved to grant planning permission in respect of planning application PA/ 21/02073.
- 3.3 The recommendation put to the Development Committee was “that subject to any direction by the Mayor of London, conditional planning permission is GRANTED subject to the following planning obligations” – paragraph 8 of the Officer’s Report to Committee.
- 3.4 As this was an application of potential strategic importance, Article 5 of the Town and Country Planning (Mayor of London) Order 2008 requires that the Mayor is notified prior to any decision being issued.
- 3.5 No such notification took place yet the Decision Notice granting planning permission was issued by the Council on 2 November 2022. The GLA was notified of the issue of the Decision Notice on the same day.
- 3.6 On 3 November 2022 the Council received an email from the GLA advising that a decision had been issued without the statutory referral to the GLA

required by Regulation 5 of the Town and Country Planning (Mayor of London) Order 2008.

- 3.7 The appropriate procedure to resolve the contravention is for the issue of the Decision Notice on 2 November 2022 to be quashed through judicial review proceedings.
- 3.8 The quashing of the Decision Notice of 2 November 2022 will not affect the decision of the Development Committee of 21 March 2022 to grant permission subject to planning obligations and any direction of the Mayor of London. It will enable the Council to comply with Article 5 of the Town and Country Planning (Mayor of London) Order 2008 by sending the information required by that Article to the Mayor of London.

The Mayor of London may either -

- Notify the local planning authority in writing that he is content for the application to be determined in accordance with the information provided; or
  - Issue a direction that the application be “called in” to permit it to be determined by the Mayor; or
  - Direct refusal of the application
- 3.9 Once the Mayor of London has responded, a Decision Notice may then be issued in accordance with the decision of the Development Committee of 21 March 2022 and any direction or notification issued by the Mayor of London.
- 3.10 The Monitoring Officer will keep members apprised of developments and will report back to the next Full council meeting

#### **4. EQUALITIES IMPLICATIONS**

- 4.1 There are no equalities implications arising from the report.

#### **5. OTHER STATUTORY IMPLICATIONS**

- 5.1 This section of the report is used to highlight further specific statutory implications that are either not covered in the main body of the report or are required to be highlighted to ensure decision makers give them proper consideration. Examples of other implications may be:
- Best Value Implications,
  - Consultations,
  - Environmental (including air quality),
  - Risk Management,
  - Crime Reduction,
  - Safeguarding.
  - Data Protection / Privacy Impact Assessment.

Risk Management

- 5.2 Organisations that have good governance use clear decision-making processes, behave openly by reporting on their activities, actively engage with their stakeholders, effectively manage the risks they face, and take responsibility for controlling and protecting their assets, including their reputation.
- 5.3 Current measures to manage the decision issuing process include a series of checks and ultimate sign off by a senior manager. Going forward to formalise this further, Officers responsible for finalising decision notices are completing a post-decision template to ensure that all the steps required to be undertaken following a decision to either grant or refuse a planning application have been undertaken. This template is to be checked and signed by senior managers in the service before a decision is issued.

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

- 6.1 There are no significant financial implications arising from this report.

## **7. COMMENTS OF LEGAL SERVICES**

- 7.1 Section 5 of the Local Government & Housing Act 1989 requires the Council to appoint an Officer to act as the Council's Monitoring Officer. The Act provides that it is the personal duty of the Monitoring Officer to report formally to the Council on any proposal, decision or omission by the Council, which has given rise to, or is likely to, or would, give rise to, the contravention of any enactment, rule of law or statutory code of practice.
- 7.2 In preparing a Statutory Report the Monitoring Officer must formally consult with the Chief Executive, as Head of the Paid Service, and the Finance Director.
- 7.3 As soon as practicable after completion of the report a copy must be sent to each Member of the Council. Members are required by the Act to formally consider the report at a meeting of the Full Council, which must be held not more than 21 days after copies of the report have been first sent to them. This report is triggered by the above-mentioned failure to comply with Article 5 which is a contravention of legislation
- 7.4 Judicial review proceedings are the most appropriate route to quash the decision.
- 7.5 An alternative option which is not recommended is to revoke the planning permission under S.97 of the Town and Country planning Act 1990. This would normally require compensation to be paid but it is unlikely to in this case as the Council was the planning applicant but there is a remote possibility that third parties might make a claim.
- 7.6 However, revocation would require a new planning application and updated consultation whereas quashing of the Decision Notice simply requires the Decision Notice to be reissued following the correct procedure.

- 7.7 In addition, revocation rather than quashing could be considered an abuse of process. The Court of Appeal decision in *R v Bassetlaw Council ex p Oxbly* (1997) refers where it was held that the correct approach in respect of a invalid permission was to seek a quashing of the grant of permission by way of Judicial Review proceedings.
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## **Linked Reports, Appendices and Background Documents**

### **Linked Report**

- Report to the Development Committee – 21 March 2022.

### **Appendices**

- None.

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

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

List any background documents not already in the public domain including officer contact information.

- None.

### **Officer contact details for documents:**

N/A