

Cabinet 25 October 2023	 TOWER HAMLETS
Report of: Jennifer Peters, Director of Planning and Building Control	Classification: Unrestricted
Transfer of town planning powers from the London Legacy Development Corporation to Tower Hamlets	

Lead Member	Councillor Kabir Ahmed, Cabinet Member for Regeneration, Inclusive Development and Housebuilding
Originating Officer(s)	Paul Buckenham Head of Development Management
Wards affected	Bow East and Bromley North Wards
Key Decision?	Yes
Reason for Key Decision	Significant impact on more than one ward
Forward Plan Notice Published	23/08/2023
Exempt information	N/A
Strategic Plan Priority / Outcome	Providing homes for the future Boost culture, business, jobs and leisure Working towards a clean and green future A council that works for you and listens to you

Executive Summary

The Mayor of London has confirmed their intention that the London Legacy Development Corporation's Town Planning powers will be transferred back to each of the four London boroughs that have land within the Corporation's planning boundary.

To enable the transfer of planning powers back to Tower Hamlets, secondary legislation will be made by Parliament and the Mayor of London will prepare a Statutory Transfer Scheme (STS) under section 216 of the Localism Act 2011.

The STS lists the rights and liabilities to be transferred, including records of planning decisions, un-determined planning applications, planning enforcement cases, appeals, planning obligation agreements and receipts, Community Infrastructure Levy receipts. Transfer of staff has been scoped out of the STS. The Mayor of London has requested that the London boroughs affected confirm their consent to enter into the STS.

Recommendations:

The Mayor in Cabinet is recommended to:

1. Confirm their support for the statutory process for the transition of planning powers from the London Legacy Development Corporation to Tower Hamlets.
2. Delegate any further amendments to and completion of the Statutory Transfer Scheme and supporting documents to the Corporate Director of Housing and Regeneration in consultation with the Mayor.
3. Authorise the Director of Legal Services to complete any legal steps that might be required prior to and as a consequence of the transition of planning powers from the London Legacy Development Corporation to Tower Hamlets.

1 REASONS FOR THE DECISIONS

- 1.1 To facilitate the transfer of rights and liabilities relating to Town Planning functions from the London Legacy Development Corporation to Tower Hamlets.

2 ALTERNATIVE OPTIONS

- 2.1 Alternatively the Mayor could decide not to confirm consent to the Statutory Transfer Scheme. This would signal to the London Mayor and Secretary of State that the Council does not support the proposed return of town planning functions for the parts of Bromley North and Bow East Wards that are currently within the LLDC planning area.

3 DETAILS OF THE REPORT

- 3.1 The London Legacy Development Corporation (LLDC) is a London Mayoral Development Corporation (MDC) established in 2012 under Section 198 of the Localism Act 2011. The LLDC's stated remit is to deliver the Olympic legacy promises made in the original London 2012 Games bid: the physical legacy of the Games, the long-term planning, development, management and maintenance of the Park and its impact on the surrounding area after the London 2012 Games.
- 3.2 The LLDC is also the Local Planning Authority for land within its boundary, overlapping with Tower Hamlets, Hackney, Newham and Waltham Forest borough boundaries. The four boroughs are collectively described as the Growth Boroughs. In Tower Hamlets this area includes parts of Bromley by Bow and Fish Island, east of the A12, south of Hackney Wick and directly adjacent to the Queen Elizabeth Park.

- 3.3 The London Legacy Development Corporation (Planning Functions) Order 2012 transferred planning powers to the LLDC, for local plan making, determining planning applications, appeals and enforcement.
- 3.4 In February 2020, the Legacy Corporation's Board agreed that LLDC's town planning powers and functions would return to the four neighbouring boroughs of Newham, Hackney, Tower Hamlets and Waltham Forest, by the end of December 2024.
- 3.5 On 8 September 2022, the Mayor of London formally decided for the purposes of the Localism Act 2011 that from 1 December 2024 LLDC shall cease to exercise its town planning functions and has confirmed to the Secretary of State his intention to return planning powers from the LLDC to the four growth boroughs, with effect from 1 December 2024.
- 3.6 The Mayor of London proposes that the LLDC will remain as a MDC, with a reduced geographical area to deliver the ongoing management and regeneration of the Queen Elizabeth Olympic Park area.
- 3.7 For planning functions to return to Tower Hamlets and the other growth boroughs, secondary legislation has to be passed by parliament, described as a **Statutory Instrument (SI)** and the Mayor of London will prepare a **Statutory Transfer Scheme (STS)** to transfer existing planning related rights and liabilities.

Statutory Instrument

- 3.8 The Statutory Instrument would be secondary legislation that effectively reverses the transfer of planning powers from the boroughs to the LLDC in the 2012 Order. The SI will also deal with any new planning powers conferred to planning authorities generally in the period since the LLDC was established,, for example Community Infrastructure Levy (CIL) provisions.
- 3.9 The proposed scope of the SI has been prepared by the Department for Levelling Up, Housing and Communities and agreed with Tower Hamlets and the other growth boroughs. Borough officers have requested that the SI references the preparation of new development plan documents covering areas currently within the LLDC boundary, to reflect the programme for the Council's revised Local Plan.

Statutory Transfer Scheme

- 3.10 Section 216 of the Localism Act gives powers to the Mayor of London to transfer property, rights and liabilities vested in an MDC to a permitted recipient, which can include a London Borough.
- 3.11 In the case of the LLDC planning powers, the Mayor of London intends to make a Statutory Transfer Scheme to transfer the following planning related matters to the growth boroughs:

- Data and information relating to determined and live planning applications, planning appeals and enforcement matters;
 - Data and information relating to planning policy;
 - Section 106 planning obligation agreements between the LLDC and developers/land-owners;
 - Funding agreements arising from the allocation of Section 106 and CIL receipts;
 - A proportion of unallocated Section 106 and CIL receipts.
- 3.12 No property assets would be transferred. The Council would become liable for the monitoring of obligations in existing Section 106 legal agreements, the collection of CIL and managing related grant funding agreements for Section 106 and CIL expenditure.

Approach to staff transfer

- 3.13 Section 218 of the Localism Act refers to the transfer of contracts of employment. This means that the STS could include the transfer of staff working at the LLDC to the growth boroughs. In such cases the Transfer of Undertakings (Protection of Employment) Regulations would apply (TUPE).
- 3.14 Alternatively if the STS does not include staff transfer, there may be an argument that the guidance in the Cabinet Office Statement of Practice (COSOP) for Staff Transfer in the Public Sector would apply. In either scenario planning staff would transfer to the boroughs and become their employees but with protection of their current LLDC terms and conditions.
- 3.15 The boroughs have worked together and have obtained independent legal advice that neither TUPE nor COSOP apply to the proposed transfer of planning powers. A Memorandum of Understanding (Appended) has been prepared between the LLDC and growth boroughs which confirms this position and that the boroughs would not consent to an STS made by the London Mayor if it included staff transfer.
- 3.16 The growth boroughs recognise that it would be desirable to retain the planning experience and knowledge of LLDC staff working in this area. The MOU provides a commitment to ensuring that employment opportunities arising in the boroughs prior to planning transition are communicated to LLDC staff so that they may apply for advertised vacancies and be considered in accordance with the Council's recruitment procedures.

Implications arising from the STS

Data transfer

- 3.17 There are approximately 1,500 planning records that will be transferred, which will require data input and electronic documents to be added to the Council's data management and document management systems.
- 3.18 A pilot exercise has been undertaken to establish the likely impact on resources. To ensure the process is carried out efficiently and accurately, short term, temporary staff resources would be required in the Planning and Building Control Division. LLDC has a budget to support the data transfer activities. A business case has been submitted to access funding to support two fixed term posts for a maximum of six months.

Development Management

- 3.19 The boroughs are working closely with LLDC to establish a suite of agreed protocols and joint working procedures for the smooth transition of live planning applications, appeals and enforcement cases. These will also set out best practice advice to prospective applicants, including circumstances where the LLDC would not be able to determine a submitted planning application prior to the return of planning powers to Tower Hamlets.
- 3.20 The Council's pre-application planning advice service has been updated to confirm that the Council will be a party to pre-application discussions on major development proposals in the LLDC area and that the Council's published fees and charges will be levied.

Planning Obligations and Community Infrastructure Levy

- 3.21 The Council will become liable for the monitoring and enforcement of all existing planning obligations secured in Section 106 agreements. A list of relevant agreements (to date) is set out in the Schedules to the STS.
- 3.22 Any unallocated receipts from Section 106 agreements within the Tower Hamlets portion of the LLDC, as at the date of transfer of powers, will be transferred to the borough.
- 3.23 Any unallocated receipts from the Community Infrastructure Levy will be transferred to each of the growth boroughs on a pro-rata basis, determined by the geographic area of land within the LLDC boundary. For Tower Hamlets this would equate to 16% of the unallocated receipts.
- 3.24 Linked to this are a series of grant funding agreements with third party organisations to deliver certain planning obligations and drawing down funding provided by Section 106 agreements and/or Community Infrastructure Levy funds and made available through the LLDC's allocation process. The Council will become liable for the oversight, monitoring and enforcement of these agreements, as set out in the schedules to the STS.
- 3.25 The proposed Statutory Instrument will confirm that the LLDC CIL charging schedule will continue to apply to development after planning powers have been returned and until such time as the Council adopts a modified charging schedule to cover the Tower Hamlets portion of the former LLDC area.

Implications arising from transfer of planning powers

- 3.26 The return of planning powers from the LLDC will mean that Tower Hamlets and the other growth boroughs will become responsible for planning decisions in an area where the Council has had (limited influence on strategic planning and development management for some ten years.
- 3.27 There will be increased workloads involving the handling of current live planning applications and receipt of future applications for development. The LLDC has determined applications on several major sites within the Tower Hamlets boundary, but there will be residual matters for the Council to deal with and other sites coming forward for future development.
- 3.28 There will also be increased work associated with the ongoing monitoring of Section 106 agreements and collection of CIL. Work on the proposed revisions to the Local Plan will include policies for the Tower Hamlets portion of the LLDC area and the Council will be able to take a lead role in the spatial planning of Fish Island and Bromley by Bow.
- 3.29 The Director of Planning and Building Control will assess the capacity of services within the Division to absorb additional work and put forward any requests for growth as appropriate, taking account of any income potential associated with the additional work.

4 EQUALITIES IMPLICATIONS

- 4.1 An equalities screening exercise has been undertaken and no equalities implications have been identified.

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.

Data protection and privacy

- 5.2 To enable the transfer of the planning function, a complete and comprehensive set of planning data and records needs to be transferred to the four boroughs.
- 5.3 The transferring planning data will include 'personal data' (eg: names, addresses, contact details) that was submitted as part of the planning application or as comments and representations in response to the planning application consultation process and/or the Local Plan and other policy consultation processes.
- 5.4 The boroughs responsibilities towards this personal data will be the same as the regulations and governance that cover the handling and processing of personal data within the LLDC. The personal data will continue to be used for the purpose it was collected, that is to support the planning process.
- 5.5 The growth boroughs and the LLDC have collaborated on a Data Transfer Plan to manage the transfer of data and ensure the process adheres to the General Data Protection Regulations.

6 COMMENTS OF THE CHIEF FINANCE OFFICER

- 6.1 The report is seeking approval for the statutory process for the transition of planning powers from the London Legacy Development Corporation to Tower Hamlets.
- 6.2 There are a number of financial implications emanating from the transfer of planning powers back to the Council. There will be an increase in workload as the planning department will become liable for monitoring and enforcing all existing planning obligations secured in Section 106 agreements and collection of CIL and the monitoring and enforcement of grant funding agreements with third party organisations to deliver certain planning obligations. The team will also be required to administer live planning applications and future applications for development that previously would have been the responsibility of the LLDC.
- 6.3 The Council will benefit from additional planning income from statutory planning application and pre-application fees. These fees should meet the additional cost associated with the increased work outlined above and therefore the cost associated with transferring planning powers back to the council should not impact negatively on the General Fund budget position.
- 6.4 Any unallocated receipts from Section 106 agreements within the Tower Hamlets portion of the LLDC, as at the date of transfer of powers, will be transferred to the borough.
- 6.5 Any unallocated receipts from the Community Infrastructure Levy will be transferred to each of the growth boroughs on a pro-rata basis, determined by

the geographic area of land within the LLDC boundary. For Tower Hamlets this would equate to 16% of the unallocated receipts.

7 COMMENTS OF LEGAL SERVICES

- 7.1 This report seeks approval for the necessary work to be undertaken and completed to secure the successful transfer back to LBTH of statutory planning functions of local planning authority for parts of Bromley by Bow and Fish Island, east of the A12, south of Hackney Wick and directly adjacent to the Queen Elizabeth Park.
- 7.2 Planning responsibility for these areas had previously been transferred to the LLDC pursuant to The London Legacy Development Corporation (Planning Functions) Order 2012.
- 7.3 The Mayor of London is following the correct legal procedure under the Localism Act 2011 and intends to make a Statutory Transfer Scheme which will, in conjunction with the Statutory Instrument to be made by Parliament (which in turn is necessary to revoke the provisions of the 2012 Order referred in 7.2, above), have the effect of returning planning responsibility to the Borough.
- 7.4 The alternative of not supporting this process would, as the Report highlights at paragraph 2.1, send the message the LBTH does not wish to have planning responsibility for these areas returned and alternative arrangements will have to be made. However, as Mayor in Cabinet is aware, consultation on a draft new Local Plan for the Borough is shortly commencing (if it has not done so already) and this draft Local Plan contains a proposed vision and objectives for development in the Borough. One of the needs for a new Local Plan has been identified as the return to the Borough of planning responsibilities for those parts of the Borough which are currently within the area of the LLDC.
- 7.5 The Report further identifies and highlights those areas where work is on-going to support the successful return of planning responsibility to the Borough and seeks confirmation that officers are appropriately authorised to follow this work to conclusion.
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Linked Reports, Appendices and Background Documents

Linked Report

- None.

Appendices

- Draft Statutory Transfer Scheme and schedules
- Memorandum of Understanding relating to staff transfer

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

- NONE.

Officer contact details for documents:

N/A.