



CITY OF WESTMINSTER

MINUTES

Cabinet

MINUTES OF PROCEEDINGS

Minutes of a meeting of the **Cabinet** held on **Monday 11th January, 2016**, Rooms 5, 6 & 7 - 17th Floor, City Hall.

Members Present: Councillors Philippa Roe (Chairman), Heather Acton, Melvyn Caplan, Tim Mitchell, Rachael Robathan and Steve Summers

Apologies for Absence: Councillor Nickie Aiken, Councillor Daniel Astaire, Councillor Danny Chalkley and Councillor Robert Davis MBE DL

1 WELCOME

Councillor Philippa Roe (Leader of the Council) welcomed those present

2 DECLARATIONS OF INTEREST

There were no Declarations of Interest.

3 MINUTES (14.12.2015)

3.1 The Leader, with the consent of the Members present, signed the minutes of the meeting held on 14 December 2015 as a true and correct record of the proceedings.

4 EXEMPT REPORTS UNDER THE LOCAL GOVERNMENT ACT 1972

Resolved:

That under Section 100 (A) (4) and Part 1 of Schedule 12A to the Local Government Act 1972 (as amended), the public and press be excluded from the meeting for the following item of business because it involved the likely disclosure of exempt information on the grounds shown below and it is considered that, in all the circumstances of the case, the public interest in maintaining the exemption outweighs the public interest in disclosing the information.

Grounds:

Information relating to the financial and business affairs of an individual including the Authority holding the information and legal advice.

5 THE COUNCIL'S APPROACH TO TENANTS RIGHTS TO LIGHT: USE OF WESTMINSTER CITY COUNCIL'S POWERS TO OVERRIDE RIGHTS TO LIGHT TO FACILITATE THE DEVELOPMENT OF LAND TO FACILITATE AN EDUCATION FACILITY AND RESIDENTIAL DEVELOPMENT ON THE SITE AT SUTHERLAND STREET (SEE REPORT OF HEAD OF MAJOR PROJECTS)

5.1 The Director of Law updated Cabinet and referred to the advice from leading Counsel which had been circulated to all Cabinet Members. The Director of Law referred to a further conference with Counsel and confirmed that the proposals were seen as reasonable and in the circumstances justifiable and not too generous or small. She also confirmed that different levels of compensation would apply depending on the degree of inquiry incurred.

5.2 Members asked that a framework of possible levels of compensation, given the number of sizeable developments which are currently under consideration, be drawn up for future use.

5.3 Cabinet Members asked that no correspondence be issued unless a right to light existed and then the injured party should be asked to ascertain that they had such a claim. In such cases every care was needed to ensure that the correspondence issued was correct.

Resolved:

5.4 That assuming the Council is likely to be supportive of the development and should a stalemate ever exist, that it was probable that the Cabinet would consider using its powers to support development, as a last resort.

5.5 That assuming officers would first establish if a legal right to light existed for tenants and having done so would assess the extent of the injury. Noting that typically a freeholder (as a sole owner and occupier) would receive a total compensation payment of between 3 and 5 times book value. This sets the parameters for a reasonable total settlement of the injury.

5.6 That in view of the fact that typically a freeholder (as a sole owner and occupier) could receive a total compensation payment of between 3 & 5 times book value and this should set the parameters for a reasonable total settlement of the injury, officers would open negotiations with both parties within these parameters and would be encouraged to offer circa 66% to the freeholder and circa 33% to the tenant where the tenant is a secure tenant. In the case of assured short hold tenancies and fixed term tenancies the percentage offered to the tenants should be reduced and as such the freeholder's percentage will be increased.

- 5.7 That where the total compensation per property, remains below £10k it is considered reasonable for the Council to increase the multiplier.
- 5.8 That Appendices A, B, C, D and E to this report be exempt from disclosure by virtue of the Local Government Act 1972, Schedule 12A, Part 1, paragraph 3 (as amended) in that these documents contain information relating to the financial or business affairs of any particular person (including the authority holding that information).
- 5.9 That the Cabinet notes the content of the report and agreed as follows:
1. That the land in yellow in Appendix F to the report appropriated from Education and Investment purposes in compliance with Section 122 of the Local Government Act and the subsequent use of the City Council's powers under Section 237 of the Town and Country Planning Act 1990 to override rights to light of neighbouring properties infringed by this development.
 2. That power be delegated to the Head of Development in consultation with the Tri-borough Director of Law be authorised to agree the settlement of the four tenanted and four leaseholder properties rights of light claims, together with the any associated fees and thereafter to formalise the agreements by Deed.
 3. That it be noted that the proposed settlement of rights of light compensation payments and associated fees for leaseholders affected by this scheme will be made by the developer within a pre-agreed budget. Should these budgets be exceeded officers would seek authorisation for a budget provision.

Reason for Decision

As outlined previously, the risk of injunction arising from the "rights to light" held by neighbouring owners potentially interfered with by the development, means that the approved scheme may not proceed unless the City Council resolves to exercise its powers to override these rights through appropriation and subsequently through the use of Section 237 of the 1990 Act to facilitate the development.

There is a compelling case in the public interest to facilitate this development and as demonstrated by the Council securing planning permission and the procuring of a delivery partner to deliver this education and community facility, there is a reasonable expectation that the scheme will proceed with a developer procured and willing to commence work subject to the injunction risk being mitigated. Although as outlined above, this cannot be delivered simply through the granting of planning permission. In balancing the benefits of the development and the concerns of those whose rights it is proposed to override, there is clear evidence that the public benefit outweighs the private loss.

Accordingly, Cabinet took the decision that the land at Sutherland Street, as set out in the report, be appropriated from its existing purposes (which are thought to be Education and Investment Purposes) to planning purposes under Section 122 of the 1972 Act so as to engage the provisions of Section 237 and thereby authorise the development to be carried out notwithstanding the fact that it involves an infringement of rights to light. A previous report in September 2014 authorised the appropriation of this land to housing purposes but this was never implemented. The land was previously used for a school and later for Adult Education purposes and more recently has been a cleared site without buildings and held therefore for investment purposes.

The Meeting ended at 6.58 pm

CHAIRMAN: _____

DATE _____