



City of Westminster

Policy and Scrutiny Committee

Date:	19 January 2017
Classification:	General Release (Appendices 3 & 4 of Annex 1 are Confidential)
Title:	Garden Bridge Trust Associated Agreements: Consideration of Cabinet Member Decision of 20 December 2016
Report of:	Ed Watson, Executive Director for Growth, Planning and Housing
Cabinet Member Portfolio	Built Environment Finance and Corporate Services
Wards Involved:	St James's
Policy Context:	
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1 Summary

- 1.1 This report considers the decision made by the Cabinet Members for the Built Environment and for Finance and Corporate Services regarding the acquisition, appropriation and disposal of property intended to facilitate the next stage of the Garden Bridge. (The Cabinet Member Report is at Annex One.)
- 1.2 The decision was taken shortly before Christmas; over the break Councillors received a large amount of correspondence in relation to this decision, raising a wide range of matters. The report is structured so as to differentiate between those items which are within the direct scope of the cabinet member decision and those which are not.
- 1.3 The scope of the call-in has been determined by considering those items relevant to the property decision and the Cabinet Member Report, items where the correspondent is directly affected by the matter of concern, or where the issue is not dealt with by another public process yet to be completed. Some issues raised, such as general matters of concern or where there will be further public advertisement, are referred to here for explanation.

2 Recommendation

2.1 That the Committee decide whether it wishes to:

- endorse the decision, or
- refer it back to Cabinet members for further consideration, possibly identifying specific matters to be explicitly explored, or
- refer the decision to full Council for further consideration, again possibly identifying specific matters.

3 The Garden Bridge

3.1 *The Bridge*

3.1.1 The project to build the Garden Bridge, a pedestrian bridge stretching from the South Bank to the Temple, has been some years in the development. The developers are a charity, the Garden Bridge Trust (GBT), who intend to create a heavily planted walkway. It has had a widely debated history, particularly in relation to its funding and a series of decisions by public bodies to support it.

3.1.2 Building the Garden Bridge requires planning permission from L B Lambeth and Westminster City Council and a license from the Port of London Authority. Westminster City Council Planning Committee gave consent to the necessary works in the City in December 2014. (The relevant reports and the text of the decision are publicly available on the Council's website <http://idoxpa.westminster.gov.uk/online-applications/applicationDetails.do?activeTab=documents&keyVal=N6CFMORPG1700&documentOrdering.orderBy=documentType&documentOrdering.orderDirection=descending>.)

3.1.3 There are a series of conditions attached to that consent. GBT must demonstrate that they have satisfactorily discharged those conditions before they can start construction.

In particular:

- the land must be assembled to enable the construction *before* the s106 agreement attached to the planning consent can be signed. (The suggestion that the s106 agreement should be completed first is incorrect.)
- the s106 agreement requires an Operation and Maintenance Business Plan (OMBP) which must be satisfactory to WCC.
- that plan must include a guarantee from a robust body that they will meet those costs. This will in fact come from the Mayor of London and is itself conditional upon the GBT financial strategy.

3.2 *Land Assembly at Temple Station*

- 3.2.1 The Garden Bridge will meet the north bank of the Thames at Temple Station. Construction relies on being able to use the site which in turn relates to its ownership which rests with London Underground Limited (LUL) and the City Council. There are various statutory provisions in local legislation dating back to the late nineteenth century that apply to the part of the Embankment on which the bridge is proposed to be constructed including Temple Underground station and the roof and terrace.
- 3.2.2 The GBT have done extensive searches to ascertain and contact the landowners who have the benefit of these rights granted. One of the main landowners is the Duke of Norfolk who is the sole beneficiary of a wide range of provisions contained in local legislation dating from 1862, 1864 and 1903. The Duke was approached by GBT and has given his consent to the construction and use of the new bridge by way of a letter dated 19th June 2014.
- 3.2.3 Two further local Acts in 1910 and 1919 imposed restrictions for the benefit of both the Duke of Norfolk and 'lessees of any house or building on the Strand Estate abutting the approach road' which is now known as Temple Place. There is an express restriction in the 1910 Act prohibiting use of the Temple station roof terrace for any purposes save for repair and cleansing without the consent of the Duke and the lessees. The 1919 Act prohibits the construction of any building upon the roof of Temple Underground station and restricts the use of the roof to a number of stated purposes unless otherwise agreed by the owners and lessees on Temple Place. GBT instructed an experienced land referring company to ascertain and contact the beneficiaries of the restrictions in these Acts to enable the Trust to obtain consents allowing these restrictions to be overridden. Several owners have consented but others have not.
- 3.2.4 London Underground Limited (LUL), officers of WCC and the Garden Bridge Trust, having obtained advice from Queens Counsel, determined that the most cost effective and risk averse option would be for the Council to appropriate the land owned by the Council required by the Trust and to acquire the land owned by LUL (ie the Roof Terrace) for planning purposes in order to override the rights granted in the various enactments to enable the construction of Garden Bridge.

The chosen course of action has therefore been for the Council:-

- (1) gain ownership of the LUL land, (i.e. the roof terrace above Temple Underground Station and the airspace above the roof terrace – referred to in the documents as the Airspace and Compound, but here referred to as the Roof Terrace); and
- (2) appropriate its own land for planning purposes (i.e. an area along Temple Place, referred to as the Steps and Ramp and some airspace

and subsoil by the entrance to Temple Underground Station, referred to as the Station Forecourt); and

- (3) then dispose each of the plots of land for the construction of the bridge to the GBT by way of long leases (referred to as the GBT leases).

3.2.5 Once the GBT leases have been granted, WCC intends to assign its headleases over the Roof Terrace and will sell the freehold in the Steps and Ramp to LUL. WCC will remain the freeholder of the Station Forecourt, subject to the long leasehold interest held by GBT.

3.2.6 GBT will pay the Council a premium for each of the GBT Leases. In respect of the land which WCC will acquire from LUL, this premium is then payable up to LUL, as freeholder.

3.2.7 Some of the land owned by the Council will be appropriated to planning purposes in order to permit the construction of the bridge is public open space and the proposed appropriation therefore has to be advertised in accordance with the relevant statutory provisions and any objections received in relation to the proposals must be considered by WCC before a decision to appropriate the land can be made.

3.3 *Previous intervention to facilitate land assembly by third party developers*

3.3.1 Westminster City Council has intervened to enable key developments to proceed by use of these powers in the past. Essentially the powers exist to facilitate land assembly where otherwise proposed investment cannot achieve the authority's objectives for an area.

3.3.2 Developments where WCC has used Compulsory Purchase and its successor powers include the Land Securities programme at Victoria, the renewal of Marylebone Old Town Hall by the London Business School and the Sir Simon Milton UTC. Further information is set out at Annex Two.

3.4 *A two stage process*

3.4.1 The Council will be exercising its discretion to assemble the land and its powers to extinguish the rights only in order to dispose of the land to facilitate the construction of the bridge by the GBT. GBT must assemble the land in order to fulfill the planning conditions and planning agreement.

3.4.2 The decision members are considering at this call-in is only the decision to gain ownership of the LUL land and the appropriation of WCC land with a view to that disposal to GBT, in order to override the rights granted in the various local enactments. The Cabinet Member Report (CMR) of December 2016 only considered a decision on the first stage (appropriation and acquisition). The second stage, disposal of the land to GBT, would be subject to a second CMR

3.4.3 Council members have received numerous letters and phone calls on this topic expressing a wide range of concerns and have therefore decided on this scrutiny of the decision.

4 The decision and its context

4.1 The decision

4.1.1 In summary, the Cabinet Members for Finance and Corporate Services and the Built Environment made three decisions relating to the land assembly:

- Acquisition of the Roof Terrace.
- Appropriation of WCC land currently used for highways purposes being (a) the Steps and Ramp and (b) the Station Forecourt following advertisement and consideration of objections.
- To bring forward a recommendation for disposal to Garden Bridge Trust once the land has been assembled

4.1.2 Outline plans showing the complex overlaying areas and some photographs of the area are attached at Annex Three.

4.1.3 Assembling the land and overriding the statutory rights granted to adjoining owners in the is a necessary step towards construction of the Garden Bridge, both in fulfilling planning conditions and in practically gaining access. On its own, the land assembly does not guarantee that the Garden Bridge will be built, it merely facilitates this. If however the Council were to refuse to exercise its powers in this matter, the Bridge cannot be built.

4.1.4 The broad approach of the Council to the Garden Bridge has been neither to support the bridge construction (through funding or other contributions) nor to frustrate or prevent it. No formal position has been reached beyond the grant of planning permission in December 2014. Rather, officers have responded to questions and dealt with regulatory matters as they arise. This decision is in line with that approach. It makes clear that in various situations (including termination of any of the bridge leases, if GBT fails to be ready to complete all relevant documents by the end of 2021, or if the bridge is not completed by the end of 2025) then the various transactions are unraveled and the land returns to WCC and LUL ownership.

4.2 The focus on property matters

4.2.1 The decision relates only to the property issues. It does not call into question the grant of planning permission. In that sense it is purely facilitative. This report is therefore focused on those matters raised by Members and the public which relate to those property elements. Those concerns not directly germane to the CMR are grouped in a separate section.

4.3 *Summary of all issues*

4.3.1 Upon publication of the decision, a number of individuals, some representing organisations, wrote to members of the Council. These cover considerable ground, and are grouped as follows to facilitate this call-in:

- Costs: how are the Council's costs in dealing with this matter being met? How are the warranties structured? Requests for greater clarity about the indemnities and other risks.
- Land value and reversion: how is the market value being assessed? Will it revert to the status quo and what happens if the Bridge is not completed?
- The position of TfL and the GLA: in particular given the new Mayor's stated questions and the appointment of Dame Margaret Hodge, what is the view of TfL and the impact of the review on the future of the Bridge?
- Viability and Business Plan of the Garden Bridge: this is closely influenced by the above and not a direct concern of this decision
- Regulatory matters – highways: concerns raised about removing rights of way and stopping up
- Regulatory matters – public space (including airspace): an application to register the land as an Asset of Community Value was refused. Has the decision properly considered the role of the land as open space and as valued by residents?
- Regulatory matters – Planning: some have been mentioned, such as views.
- Private rights affected by the Garden Bridge, notably the right to light
- Environmental and social wellbeing: the report refers to these benefits as a reason for the decision. Relationship between perceived benefits and this decision.
- Procedural matters: issues raised about the Council's procedural compliance with decision making

4.4 *Context and other reviews of the Garden Bridge*

4.4.1 The Committee will be aware that there has been considerable debate and scrutiny of the Garden Bridge project. The WCC Planning Committee considered it in detail in December 2014 where the report and decision are on the Council's website. The new Mayor of London has commissioned Dame Margaret Hodge to review the project and the lessons to be learned for transparency and procurement. At government level, the National Audit Office (NAO) and the Public Accounts Committee have taken an ongoing interest in the expenditure and procurement. That interest is summarised in the Committee's submission to the Hodge Review available at <https://www.parliament.uk/documents/commons-committees/public-accounts/written-evidence/2015-20-Parliament/pac-submission-garden-bridge-project-review-281016.pdf>.

4.4.2 These reviews and decisions are part of the context for the project and where appropriate are referenced in this report.

5 Legal context

- 5.1 The decision report refers to the extensive legal context surrounding this matter, particularly the complex ownership history and the various elements of Housing and Planning Acts which give the Council the relevant powers.
- 5.2 This scrutiny report does not rehearse those powers in detail, save where regulatory and procedural matters are involved. The Council's legal advisers have been closely involved in preparing both reports and are available to answer questions at the Committee meeting.

Issues taken as in scope of the decision called-in for review:

- *Property and process costs and risks of costs to WCC*
- *Land value and conditions on which it reverts to WCC*
- *Regulatory matters concerning planning and human rights*
- *Environmental and Social wellbeing*
- *Procedural matters*

6. Property and process costs and risks of costs to Westminster City Council

- 6.1 Several specific questions have been raised about the financial implications of the property decisions involved, notably to acquire some parcels of land and appropriate others, with a view to disposal to GBT.
- 6.1.1 *Acquisition of the Roof Terrace (grant of a headlease to the Council)*
- 6.1.2 The report sets out the anticipated costs of acquisition of the Roof Terrace (by way of a long lease) from London Underground Limited (LUL) as £340,000. This sum excludes tax, but the guarantees from the Garden Bridge Trust (GBT) would cover tax should it be included. Stamp Duty Land Tax will also be covered by GBT.
- 6.1.3 WCC payment of this sum to LUL is not triggered until underleases of the Roof Terrace are granted to GBT and payment is received from them. The premium for the headlease acquisition is therefore directly passed up to LUL through WCC without delay or cost to the Council.
- 6.1.4 The specific concern raised during the call-in is whether this is the correct figure for the value of the land which is considered at para 7.1 below.
- 6.2 *Appropriation*
- 6.2.1 The Council is appropriating the land (already within the Council's ownership) being the Steps and Ramp and the Station Forecourt to facilitate the land assembly. As WCC is already the owner there is no cost involved.

6.2.2 The Steps and Ramp comprises pavement and a section of roadway along Temple Place used for highways purposes, immediately abutting the Roof Terrace.

6.2.3 The Station Forecourt includes land currently used for highways purposes (part of Embankment road and pavement), the airspace above the forecourt area immediately outside Temple Underground Station. There is also some subsoil underneath both areas.

6.3 *Other costs associated with negotiation and documentation for the Bridge*

6.3.1 The decision report spells out that GBT has agreed to cover the Council's legal and surveying fees up to £185,000 plus VAT. Of this £128,000 plus VAT has already been spent on legal fees in negotiating the suite of property documents.

6.3.2 This sum is considered adequate to cover the various process costs involved in external advisers. The amount was arrived at by the Council's external legal and property advisers managed by Westminster officers.

6.4 *Officer time*

6.4.1 Relatively limited amounts of officer time have been committed to this project, and contained within existing work programmes. While this is not externally funded, it has been managed alongside other projects with varying degrees of risk and likelihood which require officer involvement in partnerships and property transactions.

6.5 *Indemnities regarding claims and Judicial Review*

6.5.1 The Cabinet Member Report (CMR) makes clear that the acquisition and appropriation has become the agreed-upon approach as GBT has been unable to secure agreement by some parties to release the land from their rights.

6.5.2 Regarding claims about these rights, GBT is to provide an indemnity for costs incurred through Judicial Review, complaints for interference with rights and compensation, towards which £250,000 will be (on completion of the overarching land agreement) placed in escrow by GBT. This has been negotiated in lieu of a guarantee by the GLA, the security first requested by WCC members on this matter. Although that £250,000 will be in escrow, the warranty is for unlimited sums. The indemnity agreement (and sum held in escrow) is expected to be in place before the decision on acquisition/appropriation is completed following advertisement of the Council's intentions.

6.5.3 There are limitations on the use of this money to defend a Judicial Review: it cannot be used in a case which is considered (by the Council and GBT) either likely to find against the Bridge proceeding or which is down to a WCC failure.

6.6 *Operation and Maintenance costs: guarantee by the GLA*

- 6.6.1 The s106 agreement is being negotiated. It ensures amongst other matters that the maintenance of the Garden Bridge in perpetuity remains firmly the responsibility of the Garden Bridge Trust. The s106 agreement is very clear on this point – there is a clause which clearly and unequivocally states that at no time shall WCC be responsible in any way whatsoever for the maintenance of the Bridge. The s106 also contains obligations regarding any default by the Garden Bridge Trust to maintain and sets out under which circumstances WCC will invoke the terms of the linked Guarantee.
- 6.6.2 The s106 agreement cannot be completed until the Garden Bridge Trust has acquired its leasehold interest over the relevant part of the Temple Station roof. Until they are legal leaseholders they are unable to enter into the s106 agreement.
- 6.6.3 Due to the status of the Garden Bridge Trust, the fact they are entirely reliant on donations and their lack of long term funds (at this time) WCC has asked the Garden Bridge Trust to provide a Guarantor to guarantee that, should the Garden Bridge Trust in any event default on their maintenance obligations under the terms of the s106 or are wound up/cease to exist then the Guarantor will step in and undertake the Garden Bridge Trust's maintenance obligations in full. The GLA has agreed to stand as the Garden Bridge Trusts Guarantor. The Guarantee is almost finalised.
- 6.6.4 The s106 agreement and the Guarantee are two separate but linked documents. They will be completed simultaneously to ensure that there is no time lapse between the s106 agreement and the Guarantee becoming effective. This is the prudent approach.
- 6.6.5 There is no provision in the planning consent or associated agreements requiring a guarantee or demonstration of funds required for construction of the bridge.

6.7 *Compensation payments for loss of rights*

- 6.7.1 Individual land owners of adjoining and neighbouring land may, through having windows in their buildings for a certain number of years, have rights to light over the land on which the Garden Bridge is to be built. By appropriating/acquiring land for planning purposes, any claims for an injunction for infringement of these rights to light (as a result of the construction of the Garden Bridge) would be extinguished (as a result of the application of s.203 of the Housing and Planning Act 2016). Instead, such land owners who enjoy certain rights would be able to claim compensation from the GBT and the Council for infringement of these rights.
- 6.7.2 The risk of compensation payments becoming a charge to WCC is addressed in three ways.

- 6.7.3 Firstly, the indemnity which will be provided by GBT (see paragraph 9.5 above) also includes an indemnity from GBT in respect of any claim for compensation for infringement with private rights (including rights of light).
- 6.7.4 Secondly, compensation would only be payable where (a) those rights exist and (b) where they are interfered with (i.e. by construction of the bridge). In connection with rights to light, Savills were commissioned by GBT to produce a report on the potential impact the Garden Bridge would have on adjoining and neighbouring owners' rights to light. Savills' view is that there would be no infringements of any rights to light. The Council have reliance on this report by way of a duty of care letter.
- 6.7.5 The rights granted by statute (referred to above at paragraph 3) may also be interfered with as a result of the construction of the Garden Bridge. However, Ardent (appointed by GBT) have valued any potential compensation for such effect as £nil.
- 6.7.6 GBT are not aware of any other private rights which could be affected by the construction of the Garden Bridge.
- 6.8 *Abortive work*
- 6.8.1 Officers and external advisers consider that the £185,000 plus VAT referred to above is considered sufficient to cover the costs of fees even if the Bridge were not to be built.
- 6.9 *Income*
- 6.9.1 There are two small elements of income to WCC which may arise – one which will arise if the leases are granted to GBT and one which will arise should the Bridge be built.
- 6.9.2 GBT is expected to pay a small premium for the land which WCC currently owns which is being leased to GBT, totaling £31,000 (i.e. £13,000 for the Steps and Ramps and £18,000 for the Station Forecourt) in addition to the repayment of the acquisition costs identified above.) This is payable on the grant of the leases to GBT.
- 6.9.3 Under the GBT lease of the Station Forecourt WCC will receive 5% of net income earned by the GBT from use of the bridge, for example through events and sponsorship. Based on GBT's projections, their net income is expected to be £879,000 in the first five years, and will be part of the OMBP referred to above.
- 6.10 *Risk of costs to WCC*
- 6.10.1 A significant issue raised by Councillors and other requesting this call-in has been the assurance that there is no risk of costs falling on the Council through this transaction. The report does say that the Council's costs, including abortive costs, are covered.

6.10.2 Some correspondents have pointed out that costs borne by other public bodies, such as TfL, LUL or the Department for Transport (DfT) are in part paid by Westminster taxpayers. However WCC has no control over the decisions made by those bodies or their use of public funds and so this cannot be considered in either making this decision or this scrutiny.

6.10.3 Councillors have also asked about the risk of the bridge being left uncompleted. The primary mitigation of this possibility lies in the lease agreements, as discussed at paragraph 7.4, which require GBT to return the land in the same condition in which they leased it. Officers have also been reviewing other ways to ensure funds are in place to complete the project, as discussed at paragraph 8.1. These strategies are intended to minimise the risk of the Council being required to remediate unfinished construction in the public realm.

6.10.4 It should be clear to this Committee that the costs of a Judicial Review arising from the Council's own errors or negligence are not covered.

6.10.5 In connection with the negotiation of the documents, to date officer costs, hitherto marginal are also not reimbursed, while legal and surveying fees are capped to the £185,000 figure and if set to exceed that number would need further negotiation.

7 Land value and reversion

7.1 Assessment of the value of the land

7.1.1 Roof Terrace

7.1.2 The land being acquired from LUL (the Roof Terrace) is, as noted, valued at £340,000. The land is used as open space, and the opportunities for development for housing or commercial use are limited so the value is restricted. The Council is only required to pass up payment of the £340,000 to LUL once this has been received from GBT following the grant of leases to them. If those leases are not granted to GBT, no payment is due to LUL for the Roof Terrace. The valuation was arrived at and agreed between LUL and GBT.

7.1.3 There are therefore no costs incurred by any length of time between acquiring the land, and paying a premium to LUL, and receiving the value from GBT. WCC already maintains the Roof Terrace area. Therefore there would be no departure from the status quo on that point.

7.1.4 Members might consider whether a peppercorn rent is appropriate for this land. A peppercorn rent is both payable to LUL under the headleases and also received from GBT under the leases to them. Consideration for the grant of a lease often takes two forms (1) a capital payment or premium and (2) an annual rent. BGVA have advised on the valuations of the agreed figures for the premiums and have provided this advice on the basis of there being no rental income from the GBT Leases. Furthermore, WCC will no longer retain

an interest in the Roof Terrace as soon as the GBT leases are granted, so the rental income should not concern the Council (as it would not receive any, even if there were some).

7.1.5 Steps and Ramp

7.1.6 The consideration for the grant of the lease is £13,000. This is payable by GBT on the grant of the lease to GBT. The sale of the freehold (subject to the GBT lease) is not for any monetary value.

7.1.7 Again, the rent is a peppercorn and the comments above apply.

7.1.8 Station Forecourt

7.1.9 The consideration for the grant of the lease is £18,000. This is payable by GBT on the grant of the lease to GBT.

7.1.10 In addition to the premium referred to above, there is a rent of 5% of the net income from the bridge. See paragraph 6.9 above.

7.2 Reverting back to the original position and timing

7.2.1 The agreements are intended to ensure that should the Garden Bridge not proceed the current ownership and access arrangements are reinstated. The Leases, once granted by WCC to GBT, allow what is considered a sufficient period within which it is contemplated the Bridge will be constructed. However if any of the following occur then either party can terminate the Leases: -

- (i) works have not started by 31 December 2021; OR
- (ii) works have not completed by 31 December 2025; OR
- (iii) any of the other Bridge Leases are terminated.

7.2.2 Regarding the transfer of land on which the Steps and Ramp are to be constructed, should such works not have commenced by 31 December 2021 then WCC can call this land back from LUL.

7.2.3 The WCC Headleases of the Roof Terrace can be terminated by either party if the Overarching Land Agreement (ie the agreement entered into up front by all the relevant parties) is terminated for any reason, including if the GBT Leases are not granted by 31 December 2021. The granting of the GBT Leases triggers the assignment of the WCC Headleases to LUL.

7.2.4 In summary: if by the end of 2021 works to the Bridge have not begun then even if the Leases and Headleases have been granted everything reverts to the current status quo.

7.3 *Process for reversion*

7.3.1 This reversion is not automatic as notices will need to be service. There are different time periods for the different terminations.

7.4 *Procedure should the Bridge be started and not completed*

7.4.1 Councillors have asked about the situation should be the Garden Bridge be started within the required time but not completed and with little or no likelihood that it will be completed.

7.4.2 There are landlord and tenant break options in the GBT leases if practical completion of the Garden Bridge has not occurred by 31 December 2025. If the Council, as landlord, was to exercise this break option after 31 December 2025 it can do so by serving notice on GBT after that date.

7.4.3 If GBT as tenant wants to exercise that break option, it can only do so if it has removed all relevant works and reinstated the premises to as they were before the worked started (with the exception of some below-ground piling).

7.5 *Relationship to this call-in*

7.5.1 The issues raised in the requests for call-in regarding property and process related costs and the risks of costs falling on WCC, although not explicit in the report, appear to have been addressed by officers, in particular managing cash flow and property related risks to the Council.

8 Regulatory matters falling within the parameters of the call-in

8.1 *Planning*

8.1.1 This acquisition and appropriation are being undertaken for planning purposes as described above. Several areas of concern to this Committee, notably funding for maintenance, are the subject of guarantees which come through fulfillment of planning conditions and are themselves conditions of final agreement.

8.1.2 Section 203 of the Housing and Planning Act 2016 is the replacement provision for section 237 of the Town and Country Planning Act 1990 which has the effect of overriding the property rights of landowners with the benefit of the rights in circumstances where redevelopment commences on land acquired or appropriated by the Council for planning purposes pursuant to the grant of planning permission.

8.1.3 The effect of section 203 is similar to that of section 237, but a new requirement has been introduced into section 203 stipulating that the local authority 'could acquire the land compulsorily' for the purpose of the development. This raises the question as to whether this alludes to the evolved principles applied in regard to the exercise of section 237 as to whether there is a compelling case in the public interest for the use of such

powers or whether the local authority has to go further in establishing justification for the use of such powers. In this instance this might require a binding commitment from the GBT to deliver the development of the bridge for which the powers are required and being satisfied that GBT will have the funds to complete the project.

- 8.1.4 There are no additional requirements on the Council to consult with landowners having the benefit of these statutory rights at this stage when the planning permission is implemented.
- 8.1.5 Beyond this point, there are no planning matters relevant to the decision being taken.

8.2 *Human Rights Act*

- 8.2.1 Landowners with the benefit of the statutory restrictions set out in paragraph 3 of this report have been contacted by GBT and informed of their proposals for the Garden Bridge. They have been informed that should their consent not be forthcoming GBT would be requesting WCC to operate the provisions of section 237 of the TACP Act 1990 since repealed and replaced by section 203 of the Housing and Planning Act 2016. Queen's Counsel advice was sought as to whether the endeavours taken by GBT to contact the beneficiaries of the statutory restrictions complied with the provisions of the Human Rights Act 1998; the advice confirmed that they did.

9 **Environmental and social wellbeing**

- 9.1 The contribution of the bridge to the Council's objectives has been raised by commentators, especially considering paragraph 3.1 of the CMR which sets out the reasons for the decision. The Committee should note that in order to exercise the powers in question the Council must be satisfied that their actions both support planning purposes and contribute to the social, economic or environmental wellbeing of the area (s226 and 227 of the Town and Country Planning Act 1990.)
- 9.2 Paragraph 3.1 of the CMR sets out the reasons as:
- Facilitating the delivery of the planning permission granted by the Council and associated legal obligations on GBT, the GLA and WCC.
 - Contributing to social well-being by providing an additional link across the river.
 - Contributing to environmental well-being through being a pedestrian link and through the overall aims of the Bridge
- 9.3 These environmental and social benefits are not further set out in the decision report and several commentators have pointed to this omission.

9.4 In effect the decision relies on the extensive analysis undertaken in the report to the Planning Committee in December 2014 which did consider the benefits and challenges presented by the Garden Bridge in great detail. (See all documents at <http://idoxpa.westminster.gov.uk/online-applications/applicationDetails.do?activeTab=documents&keyVal=N6CFMORPG1700&documentOrdering.orderBy=documentType&documentOrdering.orderDirection=descending>.)

9.5 This long report considers the design, environmental, economic and social benefits of the Bridge, which it summarises by saying:

The iconic design of the bridge, the new viewpoints it will create and the proposed high quality landscaped open space will create a popular visitor attraction that will enhance Westminster's World City function. The bridge will complement and enhance the existing network of tourist, arts and cultural uses in this part of the City.

9.16 Some elements of the application are extracted at Annex Four and the full analysis and response of officers, as accepted following lengthy discussion at Committee is in the full report.

9.7 It is acceptable for Cabinet Members to have relied on this evidence in assessing the wellbeing benefits of the Garden Bridge in considering the decision made on 20 December, although it would have been appropriate for the link to and reliance on the Planning Committee assessment to be more explicit in the CMR.

9.8 In the light of this background, officers have not seen a benefit or necessity in a further review of these outcomes.

10 Procedural matters

10.1 Nature of the decision

10.1.1 Although a number of commentators have raised broader questions, this decision is about property transactions, essentially to use the Council's powers to assemble land and sell it on to a developer. It is not a funding or other regulatory decision except insofar as it enables the fulfillment of a planning consent granted by the Council. It also facilitates a necessary element in delivering a planning permission already granted by the Council.

10.2 Consultation and advertisement

10.2.1 A specific question has been raised about the report's references to consultation and advertisement before appropriation can proceed. Section 122(2A) of the Local Government Act 1972 requires advertisements for the decision to appropriate public open space for planning purposes. The recommendation in the CMR does remind Cabinet Members of the importance of this step. It would be better practice to undertake those advertisements and then ensure that any consultative responses are

brought to the attention of the relevant Cabinet Members if and when they reconsider the matter prior to appropriation of the WCC land.

10.2.2 Following this Committee meeting, officers expect to public advertisements and ensure any responses considered in respect of the appropriation of (a) the Steps and Ramp and (b) the Station Forecourt for planning purposes.

10.3 *Disposal*

10.3.1 Each of the plots of land (Airspace, Temple Station Compound, Steps and Ramp and Station Forecourt) will be the subject of various disposals. Section 233(4) of the Town and Country Planning Act 1990 requires advertisements to be submitted in respect of disposals of public open spaces.

10.3.2 Therefore, at a later stage and at the appropriate time, further advertisements for these disposals will be made and responses considered. The overarching land agreement makes it clear that it is in the Council's absolute discretion whether or not to proceed with these disposals at a later stage. The decision to acquire/appropriate land at this stage does not tie the Council down to the later decision to dispose of the land to GBT.

10.3.3 The CMR made clear that the final decision to dispose of the land to GBT is subject to a further report to Cabinet Members.

10.3.4 *Issues taken as **not** in scope of the decision called-in for review but discussed for information for this Committee:*

- *Position of the Mayor, GLA and Transport for London*
- *Viability and business plan*
- *Regulatory matters concerning highways, public space and Assets of Community Value*
- *Procedural matters*

11 Position of the Mayor, GLA and Transport for London

11.1 *Context of PAC consideration, Mayoral Guarantee and Hodge Review*

11.1.1 Although not directly reflected in the decision made by Cabinet Members a number of the requests for call-in have asked this Committee to consider the impact of the new Mayor's questions about the Bridge. The Mayor's comments should be set alongside the considerable interest shown in the project by the National Audit Office (NAO) and the Parliamentary Public Accounts Committee (PAC).

11.1.2 On election, the new Mayor made clear that he wished to explore matters about the Garden Bridge and in particular his view that the use of public funds should be minimised. He has since stated that he considers that so much money has already been spent it would be better value for Londoners

to complete the project, although he is seeking fewer closures of the bridge to the public during the year.

- 11.1.3 The Mayor has appointed Dame Margaret Hodge to chair a review of the proposals for the Garden Bridge. The PAC provided a report into their ongoing investigations (available at <http://www.parliament.uk/documents/commons-committees/public-accounts/written-evidence/2015-20-Parliament/pac-submission-garden-bridge-project-review-281016.pdf>). This further refers to the investigation of the project undertaken by the NAO in late 2015.
- 11.1.4 At the time of writing both the decision report and this Scrutiny Committee, the timing of the Hodge review is unclear. It began in September 2016 so might reasonably be expected to complete in the spring of 2017.
- 11.2 *Continuing work on the project by Transport for London*
 - 11.2.1 Several Councillors have asked whether TfL is continuing work on the project and whether this is appropriate given the Mayor's position and the ongoing review. It is of course for the Mayor to determine the work programme and priorities of Transport for London. WCC officers have discussed the matter with them and it is clear that Mayor has not said the Garden Bridge should be stopped but has said that no more public money within his control should be committed to the project. He has also been clear that he wishes to see an outcome for the money already spent and that therefore work should continue.
 - 11.2.2 It should be noted that the terms of reference for the review by Dame Margaret Hodge (as set out at <https://www.london.gov.uk/press-releases/mayoral/review-to-be-conducted-into-garden-bridge-project>) are aimed at understanding and assessing the relevant processes so far with a view to improving transparency around the project and learning lessons for the future. The Review is not a stop/go exercise through which the Bridge might be halted.
- 11.3 *Relationship of GLA-family role and decisions to WCC decisions*
 - 11.3.1 The work and role of TfL and the Mayor are significantly greater than that requested of Westminster City Council. In particular, the Mayor has provided a guarantee to underwrite the operation and maintenance of the Garden subject to GBT providing a funding strategy for its first five years as part of compliance with the s106 conditions imposed by WCC and L B Lambeth. The full text of the decision and its justification is at <https://www.london.gov.uk/decisions/md1647-garden-bridge-guarantees>.

The relevant decision, made by the previous Mayor in April 2016, says:

That, to bring it in line with Lambeth and Westminster's draft section 106 agreements, the Mayor amends the approval given under MD1472 such that his approval being subject to "the Trust demonstrating to the Mayor's satisfaction that it has secured a satisfactory level of funding to operate and maintain the Garden Bridge for at least the first five years from its completion" is changed to "the Trust demonstrating to the Mayor's satisfaction that it has a satisfactory funding strategy in place to operate and maintain the Garden Bridge for at least the first five years from its completion."

- 11.3.2 Members of this Committee should note the express intention to align this decision with the conditions on planning permission granted by this Council and L B Lambeth. While providing comfort to this authority about the maintenance of the bridge, it remains the Mayor's decision to be satisfied by the strategy adopted by GBT.
- 11.3.3 The funding strategy is itself an element of the Operations and Maintenance Business Plan (OMBP) which must be produced and agreed by both boroughs in order for the s106 agreement to be finalised. In turn that agreement must be in place before construction can begin.
- 11.3.4 Thus the Mayor's agreement to that strategy must be in place before the Bridge can begin work on the ground.
- 11.3.5 Construction must begin by December 2017, or three years from the grant of planning permission, or that consent will lapse.

11.4 Concerns raised relating to this Scrutiny

- 11.4.1 Officers have explored the position of TfL with their officers and are clear that the Mayor has not decided that the Bridge should not be supported and hence there is no expectation that the organization should stop its work on the matter. The Hodge Review, while of substantial public interest, is not a reason to halt or suspend the work on the bridge.
- 11.4.2 TfL is clear that the GBT is now responsible for ensuring compliance with the planning conditions, including developing a robust funding strategy and OMBP, managing the land assembly required (including that in Westminster), negotiating licences and preparing for construction.

12 Viability and Business Plan

12.1 Relationship of these concerns to this decision

- 12.1.1 Some correspondents have argued that the GBT Business Plan is not sufficiently robust or viable. However, it is not of direct relevance to this specific CMR relating to what is a property decision.

12.1.2 As noted above, this acquisition, appropriation and disposal are facilitative, necessary conditions for the Bridge but far from sufficient. From GBT's point of view, the project overall needs to show its viability for its investors and sponsors to proceed and to satisfy the Mayor as set out above. Part of that assessment will include the payments to be made to WCC in respect of the lease premiums, costs to be covered and ongoing income, but those will be relatively small elements of the overall costs to the trust.

12.2 *Impact on implementing this decision and reversion if the Bridge turns out not to be viable*

12.2.1 As already stated, if the Bridge is not built by 2025, the land ownership arrangements revert to the status quo (with the exception of the Steps and Ramp freehold which will remain with LUL.) This applies whatever the reason for failure including the project proving unviable.

13 Regulatory matters not within scope of this call-in:

13.1 *Highways*

13.1.1 Once the GBT have acquired the land they will need to apply for all the stopping up orders at their cost. Stopping up orders are a standard part of development and land assembly.

13.2 *Regulation of public space*

13.2.1 This is largely not relevant save for the nature of the appropriation and related advertisement, discussed elsewhere in this report.

13.3 *Considering applications for registering land/buildings as Assets of Community Value*

13.3.1 Registering a piece of land as an Asset of Community Value (ACV) gives the local community an opportunity to purchase the asset before it sold elsewhere. Land in operational use by an infrastructure provider is exempt from being so listed. The roof of the station is in operational use by TfL, as it supports the vents from the railway beneath.

13.3.2 An application to so list the roof of the station was made and refused by the Council as it is in operational use. Building the bridge does not prevent that continued operation, so the site remains ineligible for listing as an ACV. The argument that some correspondents have made, that the Council should consider listing it as an ACV before acquiring or disposing of it, is therefore not relevant.

14 Procedural matters not within the scope of this call-in

14.1 *Timing*

- 14.1.1 One concern raised by correspondents has been the suspicion that the CMR was published shortly before Xmas as a way of disguising its importance. This is not the case. Members will be aware that there is always considerable pressure to complete items of business before the break, which can sometimes delay matters for several weeks. Several CMRs were considered by WCC in the final week before the holidays.
- 14.1.2 Scrutiny Committee may also wish to note the time pressures on GBT if they are to implement the planning consents granted in 2014, which requires a start on site by the end of 2017. To achieve that, they must complete these land arrangements, meet the conditions which will lead to the Mayor's guarantees, complete the s106 agreements with the planning authorities and submit the information which shows they have discharged the obligations in those s106 agreements. Some of these steps, notably the agreement to the guarantees, are major decisions for public bodies, with the attendant necessary timescales. GBT are therefore unsurprisingly anxious to see the work completed which makes progress on this journey, of which decisions are a part.

15 Options before the Committee

- 15.1 Members have three options in this scrutiny: to endorse the decision, refer it to Cabinet Members for reconsideration or to refer to full council.
- 15.2 Should the Scrutiny Committee be minded to make a referral, it may wish to consider the matters set out in this report or which arise during the Committee discussion and request that the decision-makers give them due consideration.
- 15.3 After this Scrutiny Committee discusses the matter, officers expect to advertise the proposed appropriation for two weeks in a newspaper circulating the City, as required by s.122(2A) of the Local Government Act 1972 followed by consideration of objections and comments received.
- 15.4 If following due process officers recommend appropriation of the open land a further report will then be presented either to the relevant decision-making Members of the Cabinet or to inform consideration at full Council.
- 15.5 Should this Committee refer the matter to Cabinet Members (rather than full Council), a new CMR would be prepared.

Annexes

- One: The original decision and its appendices of which some elements are confidential as legal advice to the decision makers*
- Two: Examples of other occasions when the authority has used these powers*
- Three: Photos and plans*
- Four: Elements of the planning application for the garden bridge referring to the environmental, social and economic implications of the proposal.*