

Committee:	Date:
Planning and Transportation Committee Policy and Resources Committee Court of Common Council	22 February 2022 17 March 2022 21 April 2022
Subject: Barbican Podium Works - Governance Arrangements	Public
Which outcomes in the City Corporation's Corporate Plan does this proposal aim to impact directly?	4, 9, 10, 12
Does this proposal require extra revenue and/or capital spending?	N
If so, how much?	N/A
What is the source of Funding?	N/A
Has this Funding Source been agreed with the Chamberlain's Department?	N/A
Report of: Town Clerk and Comptroller and City Solicitor	For Decision

Summary

The Planning Protocol adopted by Planning and Transportation Committee advises that persons acting in the planning authority functions (both officers and Members) should not be involved in promoting an application for planning permission that comes before them

This raises an issue where the planning application concerns land under the management of Planning and Transportation Committee (e.g City Walkway). Projects requiring committee authority are normally promoted through the committee responsible for the land where the project is located, since that committee normally has within its remit responsibility for authorising such projects. However, if Planning and Transportation Committee promotes a project located on City Walkway (or other land it manages) it is unable to determine a planning application for the project in accordance with the Planning Protocol advice.

A project has commenced for the carrying out of the Barbican Podium Works. The officers involved in promoting the project are not involved in undertaking the City's planning functions in relation to that project. If Planning and Transportation Committee acts as the decision-maker for the purposes of promoting the project it will not be able to consider any planning application which comes forward for the project (in accordance with the Planning Protocol)

This report recommends that the Barbican Podium project be promoted by Policy and Resources Committee in order to address the "separation of functions" issue described above, to enable the project to progress, and to ensure any planning application for the project (outside officer's delegated authority) can be decided by Planning and Transportation Committee (or a sub-committee constituted by it) in accordance with the Planning Protocol.

Recommendation

1. That **Planning and Transportation Committee and Policy and Resources Committee** resolve to recommend to Court of Common Council that the functions of Planning and Transportation Committee as walkway authority and under Part II of the City of London (Various Powers) Act 1967 in connection with the promotion of the Barbican Podium Works (but not the diversion, alteration, revocation or declaration of any City Walkway) be delegated to Policy and Resources Committee for the duration of the Barbican Podium project
2. That **Court of Common Council** resolves that the functions of Planning and Transportation Committee as walkway authority and under Part II of the City of London (Various Powers) Act 1967 in connection with the promotion of the Barbican Podium Works (but not the diversion, alteration, revocation or declaration of any City Walkway) be delegated to Policy and Resources Committee for the duration of the Barbican Podium project and that the Terms of Reference of Planning and Transportation Committee be amended as shown in Appendix A and the Terms of Reference of Policy and Resources Committee be amended as shown at Appendix B

Main Report

Background

1. The Planning Protocol adopted by Planning and Transportation Committee advises that persons acting or assisting in the planning authority functions (both officers and Members) should not be involved in promoting or assisting in the promotion of the application for planning permission ¹
2. This raises an issue where the planning application concerns land under the management of Planning and Transportation Committee.
3. City Walkway is a species of statutory public access right (similar to highway rights) designated under Part II of the City of London (Various Powers) Act 1967 in respect of which the city is the walkway authority. The walkway authority's powers and duties are to pave, repair, drain, cleanse and light the City Walkway.² Under the Terms of Reference of Planning and Transportation Committee Court of Common Council has delegated to that Committee the City's functions as walkway authority and responsibilities for walkways under the 1967 Act.
4. Projects requiring committee authority are normally promoted through the committee responsible for the land where the project is located, since that is normally the committee which has within its remit responsibility for authorising such projects. However, if Planning and Transportation Committee promotes a project located on City Walkway (or other land it manages) it is unable to determine a planning application for the project in accordance with the Planning Protocol advice.
5. A project has commenced for the carrying out of the Barbican Podium Works. (The officers involved in promoting the project are not involved in undertaking

¹ Planning Protocol November 2020 Paragraph 7e. This applies the requirements of Reg. 64 of the Environmental Impact Assessment Regulations to non-EIA cases on the basis of the judgment in R (London Parks and Gardens Trust) v SoSHCLG

² Section 9 City of London (Various Powers) Act 1967

the City's planning functions in relation to that project³.) If Planning and Transportation Committee acts as the decision-maker for the purposes of promoting the project it will not be able to consider any planning application which comes forward for the project (in accordance with the Planning Protocol)

6. The Gateway 3 /4 report seeking approval of the recommended option for the Barbican Podium project and authority to appoint the project team was initially considered and approved by Planning and Transportation Committee, Project Sub-committee and Court of Common Council between January and March 2020. However, since that decision, new considerations have caused the scope of the project to alter and widen significantly. These include the adoption of the City's Climate Action Strategy (which has resulted in the project needing to give enhanced focus to greening and improvement) and the results of survey work which have shown that more intrusive and extensive drainage work is required than was initially anticipated and that some works involving replacement of expansion joints are also required.
7. As a result, a further Gateway 4C report will need to be prepared to seek approval for the increased scope and altered project. The changes are such that subject to the new proposals in the Gateway 4C report being approved, it is considered reasonable to regard Planning and Transportation Committee's approval of the project in January 2020 (and that Committee's involvement in promoting the project) as superseded. The widened and altered project is considered to be of a sufficiently different character that the prior involvement of Planning and Transportation Committee (in promoting the previous superseded proposals) would not impede that Committee's consideration of a planning application for the new proposals.
8. The departmental management responsibility for City Walkway at the Barbican has not always been straightforward because of its unusual character. In the case of City Walkway, the walkway authority has no ownership of the physical structure (unlike the position pertaining to public highway). Ownership of City Walkway remains with the owner (whether an arm's length third party or, if on City-owned property, the City in another capacity). In addition, because the City Walkway is physically linked to the wider structure, significant overlap can occur between infrastructure which is the responsibility of the walkway authority, and the wider infrastructure which is the responsibility of the owner. For example, drainage and pooling issues on the Podium could be attributable both to walkway drainage and to the linked drains for the wider structure. In order to identify clear accountability and responsibility between departments, the Director of Community and Children's Services took on the lead role for management of the Barbican common parts including the City Walkway. However, responsibility for the public access areas has never been delegated to Children and Community Services Committee nor to Barbican Residential Committee. The City Walkway remains the responsibility of Planning and Transportation Committee

Proposed Way Forward

³ However, officers for both the promoter and the planning authority have worked jointly to address the wider governance issue the subject of this report, since this does not relate to the planning application itself but only to the decision-making arrangements

9. It is proposed that the promotion of the new Barbican Podium Works be undertaken by Policy and Resources Committee for the following reasons:
 - 9.1 If Planning and Transportation Committee were to promote the project it would not be able to decide a planning application for the project (in accordance with the Planning Protocol). Planning and Transportation Committee (or a sub-committee constituted by it) is considered the most appropriate committee to decide planning applications due to the training and experience of its Members and the special arrangements adopted by that Committee for considering applications and objections. There is considered to be difficulty and risk attaching to planning decisions being made by other committees (or Court).
 - 9.2 The increased scope of the Project has introduced requirements for greening and for repairs to the wider structure involving overlap between the walkway authority and the owner's responsibilities.
 - 9.3 Policy and Resources Committee is experienced in the co-ordination of organisational governance and administration matters and in taking responsibility for general matters not otherwise dealt with by other committees.
 - 9.4 The range of functions for which Policy and Resources Committee is responsible makes it well-qualified to consider and weigh all the considerations and interests relevant to the promotion of the proposals.
10. To put the proposal in effect the Terms of Reference of the Planning and Transportation Committee and Policy and Resources Committee would require amendment as set out at Appendices A & B.
11. It is not proposed that any regulatory walkway authority functions for diversion, alteration, revocation or declaration of City Walkway be moved to Policy and Resources Committee. No regulatory changes are proposed and if they were, it is considered that this regulatory function should remain with Planning and Transportation Committee.

Other Issues

12. If Policy and Resources Committee were to promote the proposals, the Planning Protocol restriction would prevent any member of Planning and Transportation Committee who was also a member of Policy and Resources Committee from participating in any planning decision
13. In addition to the restrictions contained in the Planning Protocol, applications relating to land that Planning and Transportation Committee is responsible for managing must not be determined by that Committee. (Regulation 10 Town and Country Planning General Regulations 1992) ("Regulation 10 Issue")
14. The Regulation 10 issue may be addressed by Planning and Transportation Committee constituting a special sub-committee (with no responsibility for City Walkway) to determine any planning application. This would need to be considered by that Committee prior to an application for land it manages coming before Members

15. Your committees may wish to instruct officers to consider and report on possible alternative governance arrangements to address the issues without need for ad hoc arrangements to be put in place each time the issues arise.

Conclusion

16. It is proposed that the Barbican Podium project be promoted by Policy and Resources Committee in place of Planning and Transportation Committee in order to address the separation of functions issue outline in this report. If Court of Common Council agrees to amend the Terms of Reference of the Committees in order to implement the recommended arrangements, the Gateway 4C report regarding the proposed expanded scope of the project would be reported to Policy and Resources Committee as soon as practicable in order to progress the project. Any future planning (and listed building) applications not within officer's delegated authority to determine would be reported to Planning and Transportation Committee or a special sub-committee constituted by it.