



St Quintin and Woodlands Neighbourhood Forum

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Liz Peace CBE
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City Hall,
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July 9th 2019

Dear Liz Peace,

London Assembly Plenary session July 4th - queries arising from Q&A session on OPDC

I was in the audience at the Plenary session of the London Assembly and have some questions arising from the questions and answers at this session

1. 'Exec' and Non-exec' members of the OPDC Board

I listened to Assembly Member Gareth Bacon read out a copy of an email sent from David Lunts to you on the subject of the invitation to OPDC Board members to visit the Cargiant site.

I appreciate that this email may have had a wider circulation than Mr Lunts intended, but these things happen. What puzzled me was the terminology that he used in saying *'It is a fundamental point of principle that OPDC's exec must be present and GW must not be allowed to drive a wedge between non-execs and execs - a position which I know my team shares equally strongly.'*

Can you please explain what is meant by the terms 'execs' and 'non-execs' in relation to the OPDC Board? These terms are normally used in relation to the boards of commercial firms, or sometimes major charities and not-for-profit bodies.

The OPDC is neither of these, in governance terms. It is a 'body corporate' established under the 2011 Localism Act. My understanding is that in relation to governance and decision-making, the Corporation operates very largely on the same basis as a local authority.

In local government terminology, the 'executive' of a local authority is the element with powers to make decisions. This may be a directly elected mayor, or executive ('cabinet') made up of elected councillors.

The Board of the OPDC is made up of 'members' appointed by the Mayor. You as Chair and the Board are supported and advised by staff of the Corporation normally referred to as 'officers' and including a chief executive officer, chief finance officer and so forth. The 2011 Act is clear that *'An MDC's chief executive is a member of its staff'* (Schedule 21 3(3) of the 2011 Act).

So I am puzzled that the terms 'exec' and 'non exec' members are being applied to Board members? These terms do not feature in Schedule 21 of the 2011 Act and nor in Corporation's Standing Orders as adopted back in April 2015.

When using the terms 'execs' and 'non-execs' who is Mr Lunts referring to? Are certain of the Board members (including the Chair) considered to be 'execs' because certain decision-making powers have been delegated to them as e.g. committee chairs? If so, which are seen as 'exec' members? Or by the term 'exec' does Mr Lunts mean the senior management team of officers, who are not Board members as such?

There seems to be some confusion in how the OPDC and its Board interprets its own statutory status. I have queried before the fact that the March 2019 'Candidate Brief' for the chief executive officer post, as issued to applicants by Berwick Partners as part of the (now stalled) recruitment process included a section on page 3 titled 'Company Overview'. The OPDC is not a 'company', and it is alarming that candidates for this post should have been given this impression.

So I hope that you can clarify who are the 'execs' and the 'non-exec's' as referred to in the email from Mr Lunts, and why these terms are used?

2. OPDC's relationship to Assembly members and the Assembly's scrutiny role

At the Plenary session on July 4th, it was evident that some Assembly Members are uneasy at not being able to see details of the OPDC HIF application to Government and also the content of the conditions imposed by MHCLG and Homes England on the release of this funding.

Given that it has now become clear that the GLA will need to underwrite this funding, it seems to me that Assembly Members (and the wider public) have every right to want to see this information.

In a local authority, elected members would have rights to see 'exempt' or commercially confidential information where they can demonstrate a legitimate 'need to know' in carrying out their duties. I cannot see why this same principle does not apply to e.g. those Assembly Members with responsibility for budget monitoring.

Have MHCLG and/or Homes England advised in writing that these documents cannot be shown even to Assembly members with responsibilities for scrutinising GLA budgets. If so can such written advice be published?

Both the original HIF application and any conditions applied are very relevant to the final EIP hearing on July 18th, which will explore the viability of the Draft OPDC Local Plan? Will the Planning Inspector be provided with this material, prior to preparing his report?

3. Cargiant's invitation to OPDC Board members to visit their site

You gave Assembly Members an explanation of the David Lunts email to you about the Cargiant visit, which they may have found perfectly acceptable. But to an outsider your explanation rang some alarm bells.

The failed Garden Bridge project is not a direct parallel, in that this project was overseen by a board of trustees rather than a Mayoral Development Corporation. But the inquiry reports from Dame Margaret Hodge, the National Audit Office, and from the Charity Commission include some warnings that are applicable to the current scenario of OPDC spending plans.

The Garden Bridge Trust was set up as a charity at the instigation of the then Mayor and TfL. The Charity Commission Inquiry report notes *'The charity remained heavily reliant on continuing financial support from TfL and political support from the Mayor to be able to deliver on its reason for existing and its main charitable objective – to build a Garden Bridge. In other words, the charity held very serious responsibility and carried considerable risk but, having been established specifically to undertake a particular publicly funded project, did not have the usual flexibility and discretion that allows trustees of charities with broader charitable purposes contracting with national or local government to continually assess whether doing so is the best way to deliver on those purposes for the public benefit.'*

Can London's public be confident that the OPDC Board is 'continually assessing' whether the choice of proceeding along its present path, in the face of opposition by Cargiant, is going to deliver the public benefits that were once hoped? There has been very limited evidence to date of such self-questioning, in those parts of the Board agenda made public. The Board's risk register was referred to at the Plenary session on July 4th. The public need more assurance that all Board members are fully apprised of the risks that lie ahead in the 'delivery' phase of OPDC's activities.

You explained at the Plenary session that at a recent meeting with you and David Lunts, the Mayor agreed to the use of a further drawdown of GLA funds in this financial year, to progress OPDC plans to move into 'delivery' mode. You advised that a forthcoming Mayoral Decision will confirm this position. One of the recommendations of the Hodge report on the Garden Bridge Project (page 24) was that *Where decisions are taken by the Mayor, or significant advice provided, in informal meetings these should be properly minuted so that there is a record of those decisions.* **Is there such a minute, and will it form part of the forthcoming Mayoral Decision report?**

The Hodge report also notes at paragraph 86 *'There is clearly ambiguity in people's understanding of the power of the Mayor. It would appear that the authority of a Mayoral Direction was seen to take precedence over obligations in relation to due process and value for money. Let me make it clear: a Mayoral Direction does not take precedence.'*

As I understand, it is the OPDC Board that bears responsibility for use of funds that it controls and this comment from Dame Margaret Hodge is pertinent. **Will there be a stage when the OPDC Board as a whole makes a formal decision on whether to accept and deploy a further in-year allocation of public funds from the Mayor, and whether it is in the public interest for OPDC to proceed with its plans for Phases 1A and 1B at old Oak?**

To return to the email referred to at the start of this letter, if there is to be such a stage, is it wise for Board members to have been told by you and David Lunts that they should not make their own visits to Cargiant (as seems to have been the case)? If Board Members wish to understand better for themselves the complex nature of Cargiant's business and its land requirements, and to talk to its management, why should they not do so?

There is no planning application before the OPDC in relation to the Cargiant land and no imminent prospect of one. So why should a Board member be compromised by a visit to Cargiant?

The officer anxiety over a '*wedge being driven*' between '*execs and non execs*' as referred to by David Lunts, raises alarm bells. As custodians of public funds, individual Board members are not '*non-exec*'s who are implicitly expected to go along with an '*exec*' line on major decisions taken by OPDC. Quite the opposite. As Board members they may become party to defending applications for judicial review of OPDC decisions, and required to demonstrate that these decisions were '*Wednesbury reasonable*' and well-considered judgements with all relevant information put before all of the Board. Public law and not company law principles would surely apply in such circumstances?

Had the trustees of the Garden Bridge charity been rather more alert to these sorts of governance issues, and had they challenged more of the advice from TfL officers and the former Mayor and his Office, £50m of public funds might not have been wasted for no public benefit.

I have had the benefit of taking part in the EIP on the Local Plan and hearing the differing views from leading Counsel for Cargiant and for the OPDC. Along with members of the Grand Union Alliance and the Old Oak Neighbourhood Forum, I was also able to accompany the Planning Inspector on his tour of the Cargiant land. As a result, we members of the local community feel well informed on the risks that the Corporation is taking at this critical stage.

It would be concerning should any of the OPDC Board members feel any less well informed, or have been dissuaded from seeing for themselves the '*behind the scenes*' parts of the Cargiant business.

Can the terms of any advice given to OPDC Board Members on the subject of dealings with Cargiant be made public, for the benefit of the EIP hearing on July 18th?

The sessions of the Assembly's Budget and Performance Committee on June 11th, and the Plenary session on July 4th, are the first occasions when OPDC actions and decisions have come under in depth scrutiny in public (to my knowledge).

The Old Oak Neighbourhood Forum submitted a Fol/EIR request back in March 2019, for a copy of the HIF application and for background information to the Mayoral Decision MD2401 (a report entitled *Funding to OPDC to support the Housing Infrastructure Funding Bid*, signed off on 10th December 2018). The Forum also asked for sight of the brief issued by OPDC in 2016 for its 'masterplanning' exercise. None of this information has been provided.

An April 30th request for an internal review of the OPDC decision to refuse this Fol/EIR request has not yet been complied with by the relevant GLA officer (despite statutory deadlines).

Given that the July 18th public hearing at the EIP is now imminent, an early reply to the queries set out in bold type in this letter would be much appreciated.

I am copying this letter to Assembly Members who asked related questions at the Plenary session, and to Andrew Slaughter MP and Steve Cowan.

Yours sincerely,

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Andrew Slaughter MP
Assembly Members Gareth Bacon, Navin Shah, Caroline Pidgeon, Sian Berry
Cllr Steve Cowan, Leader LBHF
Mark Walker, Chair Old Oak Neighbourhood Forum
Robin Brown, Grand Union Alliance
David Lunts, OPDC Interim Chief Executive