

## **HOLOCAUST MEMORIAL AND LEARNING CENTRE – MHCLG HANDLING** **NOTE – 4<sup>TH</sup> ISSUE – 11 November 2020**

The planning application for the Holocaust Memorial and Learning Centre (HM), made to Westminster City Council in December 2018, in the name of the Secretary of State was called-in on 5 November 2019 by the then Housing Minister, using powers under Section 77 of the Town and Country Planning Act 1990 (“called-in planning application”).

Regulation 64(2) of the Town and County Planning (Environmental Impact Assessment) Regulations 2017 (SI 2016 No. 571) (“the 2017 Regulations”) provides that:

“Where an authority, or the Secretary of State, is bringing forward a proposal for development and that authority or the Secretary of State, as appropriate, will also be responsible for determining its own proposal, the relevant authority or the Secretary of State must make appropriate administrative arrangements to ensure that there is a functional separation, when performing any duty under these Regulations, between the persons bringing forward a proposal for development and the persons responsible for determining that proposal.”

This note sets out the appropriate administrative arrangements as required by regulation 64(2) of the 2017 Regulations with respect to the called-in planning application. They ensure that:

- (i) The functions of the competent authority will be undertaken by identified persons provided with the necessary resources and acting impartially and objectively;
- (ii) Any person acting or assisting in the handling of the called-in planning application is prevented from being involved in promoting or assisting in the promotion of the application and/or the development; and
- (iii) Any person involved in promoting or assisting in the promotion of the application and/or the development is prohibited from giving any instructions to, or putting any pressure upon, any person acting or assisting in the handling of the called-in planning application, or from attempting to do so.<sup>1</sup>

This is vital to ensure that the published propriety guidance is followed (the Ministerial Code<sup>2</sup>, the Civil Service Code, and Guidance on Planning Propriety Issues) and that there is a clear process for handling this called-in planning application which avoids any potential conflicts of interest or any perception of

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<sup>1</sup> Although point (iii) should also be treated as prohibiting discussions on the merits of a project, it does not impede the provision of information on an application for development consent through the formal channels appropriate to whichever application process is being followed.

<sup>2</sup> Subject to the amendment set out with regard to Christopher Pincher MP below

conflict and/or that the decision-maker has been influenced by irrelevant considerations.

This note updates previously advised handling arrangements made in earlier versions of this note, circulated by email from Simon Gallagher, Director of Planning. It ensures that Ministers or officials who have either previously made public pronouncements or have formal responsibility on the issue of the Memorial are explicitly excluded from the decision-making process. It also ensures that this called-in planning application can be handled in line with the department's normal processes and that propriety rules are maintained. This process must be followed to ensure that a proper and fair decision under the relevant planning legislation can be taken.

Any discussion or communication about the Holocaust Memorial project or fund, or the called-in planning application between, on the one hand, the Minister of State determining the application or any official assisting him in the discharge of the competent authority's functions under the 2017 Regulations and, on the other, the Secretary of State or any official or other persons assisting in the promotion of the project or the called-in planning application is explicitly prohibited. This prohibition includes any discussion or communication with any other member of the government about the project or fund or the application for planning permission.

### **Ministerial level**

**Christopher Pincher MP** (the Housing and Planning Minister) will be responsible for exercising the functions of the Secretary of State under sections 70 and 77 of the Town and Country Planning Act 1990, section 38(6) of the Planning and Compulsory Purchase Act 2004, the Town and Country Planning (Inquiries Procedure) (England) Rules 2000 and any other applicable Ministerial statutory responsibilities arising in respect of the determination of the called-in planning application. He will handle advice / submissions on the substantive decision on the case following the planned Public Inquiry, currently scheduled to begin in October 2020. A pre-inquiry meeting took place on 10 March 2020. Advice and information on the called-in planning application will not be seen by any other Minister.

The Minister is not subject to paragraph 2.3 of the Ministerial Code or "collective Ministerial responsibility" in relation to any matter affecting the discharge of the duties of the Secretary of State as competent authority under the 2017 Regulations for the called-in planning application.

No other Minister or their Special Advisors will be able to require any official working on the called-in planning application to disclose to them, or any other person, information relating to the case.

No information or submissions concerning the Holocaust Memorial project more generally should be shared with Christopher Pincher MP or his Private Office officials ( ) supporting him on this called-in planning application.

## DG level

**Tracey Waltho** – has not had involvement in HM issues previously, and will act as Exec team representative as and when needed.

## Director level

**Joanna Averley**, Chief Planner (from September 2020), **Paul Hudson**, Senior Planning Adviser, and **Simon Gallagher**, Director Planning will be involved in the called-in planning application and should not be copied into information on the Holocaust Memorial more generally.

## Official level

**Michael Bingham** (former acting Chief Planner) and [REDACTED] will be involved in case of the need to seek specific policy advice.

### *Planning Casework Unit (PCU)*

While before the decision to call-in the application there was some engagement between PCU and colleagues in the Holocaust Memorial team in terms of understanding processes and timescales, there can now be no communication between the relevant case officers, [REDACTED] and [REDACTED] and the Holocaust Memorial team. Similarly, the Holocaust Memorial team will not have sight of any submissions or other advice on the called-in planning application.

### *Legal*

Legal colleagues have insulated specified lawyers from any involvement with the Holocaust Memorial project, such that they are not compromised and are able to work on any PCU advice should this be necessary in due course.

Advisory lawyers who will be advising on any Ministerial decision regarding the called-in planning application are: [REDACTED] (from Oct 2019 onwards), [REDACTED] (from Oct 2019 onwards), [REDACTED] (from Feb 2020 onwards) and **Matthew Stubbs** (from Oct 2019 onwards). Litigation lawyers who will also be advising in the context of ministerial decisions regarding the called-in planning application as and when necessary are: [REDACTED] (from Oct 2019 onwards), and [REDACTED] (from Feb 2020 onwards).

### *Communications*

While not involved in the process of reaching a decision, to deal with ongoing press queries now, and comms once decisions are made and issued, Comms colleagues have identified specific individuals ([REDACTED]) to deal with issues relating to the called-in planning application. They will be kept separate from any other issues relating to the Holocaust Memorial project.

*Freedom of Information / EIR Team*

██████████ and ██████████ will deal with FOI / EIR requests relating to the called-in planning application.

While it is normal practise for some responses to FOI/EIR requests to be cleared via Special Advisers or their office, those relating to the called-in planning application will not be handled in this way. Copies of final responses may be shared with advisers once they have been issued and are effectively in the public domain. Where necessary, FOI/EIR cases will be cleared with the private office officials, ██████████ and ██████████ in Christopher Pincher's office, and ██████████ and ██████████ in Communications.

*Others*

Information relating to the called-in planning application must not, except with express authority of **Tracey Waltho**, be disclosed or discussed with any person not on the list of persons to whom such information can be disclosed. Any such authorisation must comply with regulation 64(2) of the 2017 Regulations, and must require any authorised person discussing or receiving such information to comply with that regulation and these handling arrangements.

**PROPOSED HANDLING ROUTE FOR HOLOCAUST MEMORIAL PLANNING  
CASEWORK\***

Christopher Pincher  
(also [REDACTED] and [REDACTED]  
[REDACTED] in Private Office)

DG – Tracey Waltho

Paul Hudson, Senior  
Planning Adviser and  
Simon Gallagher, Director  
Planning

Joanna Averley, Chief  
Planner, Michael Bingham  
and [REDACTED]

Planning Casework Unit  
( [REDACTED]  
[REDACTED] )

Legal  
(Matthew Stubbs, [REDACTED]  
[REDACTED]  
[REDACTED] )

GLD  
( [REDACTED]  
[REDACTED] )

Comms plus FOI/EIR  
( [REDACTED]  
[REDACTED]  
[REDACTED] )

Planning Inspectorate  
( [REDACTED]  
[REDACTED] )

**\*To be kept under regular review and added / amended as necessary**

**MINISTERS / OFFICIALS TO HAVE NO ROLE IN PLANNING CASEWORK  
DECISION-MAKING\***

**MINISTERIAL / EXEC TEAM**

Secretary of State (applicant)

Luke Hall (PQs)

Perm Sec (plus office) – meetings with  
Trust

Catherine Frances (plus office) – Faith  
Portfolio

CFO – Matt Thurstan (plus office)

**HOLOCAUST MEMORIAL TEAM**

Alex Powell

Paul Downie

**OTHER OFFICIALS**

Richard Clarke

Jamie Cowling

Abigail Dean

Pedro Wrobel

Jenny Preece

Benjamin Clayton

Branwen Evans

Lucy Hargreaves

Perry Ashton

**\*To be kept under review on a 2-monthly basis and added / amended as  
necessary**

## **Detailed Handling Arrangements for Casework**

In order to ensure the separations set out above are maintained, we propose to take the following actions:

- Ensure this note is circulated to everyone working on the called in planning application and anyone else who needs to see it and issue a clear instruction email to PCU and other staff involved on handling / propriety etc; the note will be recirculated at quarterly intervals and also when there is a material amendment
- Clearly mark who can and cannot be allowed to see the document in question on all submissions / emails etc – e.g. by clearly marking all relevant mails / submissions as follows; **HOLOCAUST MEMORIAL PLANNING CASEWORK TEAM ONLY**
- Use only the agreed casework list of people as set out in this note;
- Ensure that material related to the case is not stored on shared file spaces accessible by those outside of the decision-making chain;
- Report to Tracey Waltho on propriety and handling at key stages of the called-in planning application / on request.
- Maintain a list of every person working on the called-in planning application and entitled to receive information relating to the case, including date of assignment to the task and, where appropriate, date of leaving the task – see attached Annex for those who have previously, but no longer, advised on the application.

**ANNEX – OTHERS WHO HAVE PREVIOUSLY ADVISED ON / HAD RESPONSIBILITY FOR THE CALLED-IN APPLICATION:**

Litigation lawyer

██████████ (from Oct 2019 – Dec 2019).

██████████ (From April 2020 to Oct 2020).

Housing Minister

**Esther McVey** (from Oct 2019 – Feb 2020).

Chief Planner

**Steve Quartermain** (from Oct 2019 – Mar 2020)

Housing Minister's Private Office

██████████ (from Oct 2019 to Mar 2020)

Planning Inspectorate

██████████ (from Oct 2019 to May 2020).

MHCLG Executive Team

**Emran Mian** (from Oct 2019 to June 2020)

MHCLG Comms Team

██████████ (from Oct 2019 to September 2020)

██████████ (from Oct 2019 to November 2020)

Planning Casework Unit

██████████ (from Oct 2019 to October 2020)