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5 November 2010

[www.towerhamlets.gov.uk](http://www.towerhamlets.gov.uk)

Our Ref: L/ACE/IF/db  
Your Ref:

Dear Sirs

**RE: Decision to re-route Olympic Marathon**

1. This is a pre-action protocol letter under the Judicial Review Pre-Action Protocol in support of an application for permission to apply for judicial review to quash the decision notified by letter dated 25 August 2010 of London Organising Committee of the Olympic Games and Paralympic Games Ltd (LOCOG) to change the route of the Olympic Marathon.

**The Applicant**

2. The Applicant is the London Borough of Tower Hamlets of Town Hall Mulberry place 5 Clove Crescent E14 2BY.

**The Decision in Question**

3. The decision of the London Organising Committee of the Olympic Games and Paralympic Games Ltd (LOCOG) as notified by letter on 25 August 2010 to change the route of the Marathon so that it starts and finished in the Mall and the course is on a loop that only extends as far as Tower Hill rather than the route as contained in the bidding document (the candidate file) for the London 2012 Olympic Games presented to the International Olympic Committee which was to start at Tower Bridge and finish in the Olympic Stadium.

## Orders Sought

4. The following orders will be sought from the Court:-
  - i) a declaration that the decision was unlawful
  - ii) an order reinstating the previous stated intent as contained in Section 8 of the candidate file for the London 2012 Olympic Games that the Marathon events on 5 and 12 August 2012 will be run from Tower Bridge to the Olympic Stadium
  - iii) costs

## Factual Background and Grounds

5. The London Organising Committee of the Olympic Games and Paralympic Games Limited (LOCOG) is a private company limited by guarantee. Its subscribers include the Secretary of State for Culture and Media and Sport and the Mayor of London. It is responsible for the design and delivery of the programme for the 2012 Olympic and Paralympic games in London.
6. The Chairman of LOCOG, Lord Coe, presented the bidding document (the candidate file) to the International Organising Committee of the Olympics. The London Borough of Tower Hamlets (LBTH) was a supporter of the London 2012 Olympic bid and the Council was asked to and agreed to sign a letter in support as part of the formal bid. It also took part in the granting of outline planning permission for the development of the Olympic Park prior to the bid for 2012 being submitted in order to demonstrate its support.
7. In that candidate file there were specific references to events which were to take place in the London Borough of Tower Hamlets one of which was the Marathon which was to go from Tower Bridge to the Olympic Stadium which would necessitate it being run at least in part through the borough.
8. London Borough of Tower Hamlets became one of the five Host Boroughs for the games. From 2006 it has maintained a 2012 Unit to support the hosting of a successful games and to maximise the benefits of the Games for local residents. Amongst other joint arrangements it entered into an Inter Authority Agreement with the other host boroughs pooling and sharing costs to develop a collaborative programme of work in relation to the 2012 games with an annual contribution rising to £180,500 plus the staff costs. It has developed the High Street 2012 programme to improve and celebrate the high street which connects the City to Stratford and which was to be the route of the Marathon. There is a scheme of six public realm improvement schemes and a major historic building conservation scheme

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***Chief Executive***

refurbishing and enhancing around 100 historic buildings along the high street. LBTH has therefore invested considerable resources in reliance of being a host borough.

9. At the end of August 2010 it was decided to change the route of the London 2012 Marathon so that it would no longer pass through Tower Hamlets and LBTH was informed by a letter dated 25 August 2010 (the decision letter)
10. The decision letter states "Following detailed work over the last eighteen months.... It has been concluded that the route for the Marathon race has to change with its start and finish moving to the Mall and the course on a loop that only extends as far as Tower Hill. The decision was taken after several months of work and was made on a combination of factors ...As a result of these changes I wanted to confirm that the Marathon route will now not pass through the London borough of Tower Hamlets."
11. The Leader of the Council sought clarification of the reasons for the decision particularly in view of the fact that it meant that although Tower Hamlets had been designated a "host borough" it would now host no Olympic events during the Games. This was as a result of previous decisions to remove the walking race events and the basketball from the borough. The walking races and the Marathon represented important opportunities for the residents of Tower Hamlets to participate in the games. Tower Hamlets has some of the most deprived communities in the Country and as many of the residents will be unable to afford tickets for the Olympic sites and these two events in particular will be free to view.
12. The Chief Executive of LOCOG replied on 1 October setting out further reasons for the decision citing insufficient space at Tower Bridge for the back of house infrastructure and camera positions, the configuration of the stadium for the finish would mean the last mile of the route would not be seen by spectators and the route would need the closure of Tower Bridge which would adversely affect traffic.
13. By a letter dated 4 October the Leader of the Council sought the detail of the relevant authorities consulted, the technical detail on which the decision was based and whether any Equalities Impact Assessment had been undertaken. He also noted that on 4 October the Games Time Training Venues as an investment in the legacy for London Sports facilities had been announced and once again although the candidate file did contain locations in Tower Hamlets there were now no venues in Tower Hamlets. LOCOG responded to that letter stating they had consulted "the GLA family including Transport for London and the Metropolitan Police, the Olympic Delivery Authority (ODA) and ODA Transport." They also confirmed an Equalities Impact Assessment had not been carried out.

## The Grounds

- (i) **LOCOG failed to have regard to relevant considerations (alternatively matters of capable of being relevant) namely relating to the space available at Tower Bridge**

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**Chief Executive**

14. One of the reasons given in LOCOG's letter of 1 October for the change in the venue for the start of the Marathon is that there is insufficient space available at the Tower Bridge to create the necessary back of house infrastructure and camera positions required for the Marathon.
15. LOCOG have failed to take into account all possibilities regarding the space available adjacent to Tower Bridge. There is significant open space at Potters Fields on the south side of Tower Bridge.
16. They have not considered that the official start of Stage 1 of the Tour de France in July 2007 was on the north side of Tower Bridge with the attendant camera positions being available for the world's media and back of house infrastructure.
17. There has been no examination of the possibility of alternative methods of dealing with the media requirements for example restricting the number of camera positions by accreditation of media and provision of a single feed for use by unaccredited media as will occur within the Olympic Stadium.

#### **Relating to the finishing point for the Marathon**

18. LOCOG have stated in their letter of 1<sup>st</sup> October that the configuration of the Stadium and back of house operational facilities in the Olympic Park meant that the last mile of any route finishing in the Stadium would not be seen by spectators – clearly this was undesirable for both athletes and spectators
19. There is no evidence as to why the route to the stadium suddenly became unacceptable. The route of the marathon was identified in the candidate file in 2005 (as Tower Bridge to the Olympic Stadium) and in the first edition of the Transport Plan (October 2007) on a map as along the A11 corridor. The point that the configuration of the stadium does not allow for spectators along the last mile suggests that the design of the stadium is fundamentally flawed or that the legitimate expectation of the marathon coming through the Borough along the A11 was never going to be honoured. It is unclear how or why the last mile of the marathon would be inaccessible for spectators – as the route into the stadium could have been configured via a number of entry points. It is accepted that the likely entry points are not as attractive as a backdrop for television however Lord Coe has stated that the marathon change was not predicated on the photogenic nature of the backdrop.
20. In addition a significant part of the last mile would be viewed by spectators – those in the main stadium (i.e. one and a half circuits would be over a third of a mile). Also it would be desirable for athletes to finish in a stadium where many more spectators will be able to view the finish than will be able to do so in the Mall.
21. This element of the decision is irrational as the benefits of finishing the marathon in the stadium have not been taken into account.

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***Chief Executive***

## Relating to Traffic Considerations

22. Again in their letter of 1 October 2010 LOCOG have stated that the closure of Tower Bridge would have serious knock on effects to residents moving around the city. They said a detailed analysis traffic considerations of the potential traffic management implications of the proposed route on the days scheduled for the marathon concluded that to keep London moving it was vital to keep Tower Bridge open. Tower Bridge is critical to North – South traffic movement flows across the city
23. LOCOG have failed to take into account the fact that London Borough of Tower Hamlets with the Greater London Authority has closed Tower Bridge for an all day event on a least two occasions on a Sunday. This has proved comfortably manageable and it is the contention of LBTH that this would potentially be more feasible with the 30% reduction in traffic delivered by the active travel measures supporting the Olympic Route Network (as maintained by the Olympic Delivery Authority).
24. Lord Coe maintains *the Olympic and Paralympic Marathons are much smaller events than the annual London Marathon, and other mass participation marathons. The races involve around 80 athletes ...* (press release October 2010)
25. Although it is the Highways Authority for the borough LBTH was not consulted in any analysis of the potential traffic management implications of the proposed route. Had LBTH been consulted we would have cited our extensive experience of hosting the London Marathon with almost half the distance within this borough necessitating closing roads for the whole day due to the number of participants. There has been no consideration that the traffic impacts could be significantly lower, potentially even managed via a rolling closure thereby minimizing impact.

On 4 October 2010 the route for the Marathon was announced publically and it is still proposed to close Tower Hill. This is in conflict with the decision letter which states the decision to change the route resulted primarily from a detailed analysis of the potential traffic management implications of the proposed route including the impact on the Olympic Route Network and the need to keep the traffic moving in the Tower Hill, A11/A12 Intersection, New Kent Road (South) and Minories to Commercial Street (North) areas.

26. There is therefore an inconsistency between the position as stated in the decision letter on 25 August 2010 and the published route on 4 October as the published proposed route of the marathon includes Tower Hill which will necessitate closures in the Tower Hill area and on the core Olympic Route Network itself on one of the busiest days for transporting the Olympic family.
27. There are reasonable and preferable alternative routes which LOCOG have not considered which would not adversely affect the interests of LBTH. As no consultation took place with LBTH prior to the decision LBTH was unable to use its

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**Chief Executive**

superior knowledge of the borough to provide alternatives to address the concerns LOCOG had.

28. Not only were these matters capable of being relevant considerations and LOCOG failed to consider whether they were but it was irrational and inconsistent not to take them into account.

(ii) **LOCOG failed to have regard to their policy on Diversity and Inclusion as stated in Their Diversity and Inclusion Strategy published in February 2008**

29. LOCOG has a Diversity and Inclusion Strategy Policy Document. The document states:-

“General business decision making

- Examine the decision making processes and develop a straightforward decision tool (see page 41) to help explore the equality impact of decisions made within LOCOG.
- Embed diversity and inclusion performance objectives and measures into performance management.
- Create a monitoring and measurement framework.

Our leaders at LOCOG, at all levels, have a special responsibility for creating a diverse and inclusive culture. There is a need to lead by example, actively demonstrating the importance and articulating the business and moral case for diversity and inclusion, listening to and acting upon feedback.”

30. The decision tool referred to above is an Equality Impact Assessment Tool and the Strategy Policy document describes this as

**“What about Diversity and Inclusion? (WADI?)**

Decisions taken at LOCOG (strategies, policies, projects or funding decisions) must not discriminate against, or in any way unfairly exclude, people or groups.

One way of doing this is to ask questions about the way decisions are made, eg:

- will this decision have a negative or disproportionate impact on different groups, and;
- if it does, what are we going to do about it?

The important thing is to be clear from the outset that we aim to make our decisions as fair as possible. These two questions will be included in all Board/committee papers, and addressed in all strategies and policies.”

***Kevan Collins***  
***Chief Executive***

31. At no point during the decision making process regarding the decision to change the route of the marathon was there any consultation. LBTH was not involved in any Equality Impact Assessments on the decisions. Although LBTH has requested them no copies of any such documents have been supplied but LOCOGs Diversity and Inclusion Strategy Policy Document requires them to be done before decisions are taken.

**(iii) LOCOG acted in breach of the Council's substantive legitimate expectation**

32. LOCOG made a clear, unambiguous and unqualified representation that the Marathon would go from Tower Bridge to the Olympic Stadium, ie through the Council's area. It is unfair and an abuse of power for LOCOG to resile from that representation.

**(iv) LOCOG acted in breach of the Council's procedural legitimate expectation**

33. The Council had a legitimate expectation of being consulted upon any proposal to depart from that representation. They were not, however, consulted.

#### **What the Defendant is asked to do**

34. Agree that the decision was unlawful. If it disagrees, please explain why.

35. To reinstate the decision to run the Marathon events from Tower Bridge to the Olympic Stadium/ finishing at the Olympic Stadium on 5 and 12 August 2012.

36. LOCOG is asked to pay the Council's reasonable costs

#### **Further Information required**

37. Please provide

- (i) a copy of any Equalities Impact Assessment work carried out prior to taking the decision
- (ii) a copy of the Traffic Impact assessment or any reports submitted dealing with traffic issues prior to taking the decision
- (iii) all documents e mails notes and telephone and meeting records relating to the decision from January 2009
- (iv) all documents e mails notes and telephone and meeting records relating to consultation regarding the decision from January 2009

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***Chief Executive***

- (v) all documents e mails notes and telephone and meeting records relating to the detailed work described in LOCOG's letter of 25 August 2010 with the International Amateur Athletic Federation, the International Olympic Committee, London Transport and other relevant authorities
- (vi) the detailed analysis of the potential traffic management implications of the proposed route referred to in the decision letter of 25 August 2010
- (vii) the impact assessment which led to the finding that the Marathon route had an adverse impact on Olympic Park operations

#### **Interested Parties**

38. Olympic Delivery Authority David Higgins Chief Executive Olympic Delivery Authority  
One Churchill Place Canary Wharf London E14 5LN

#### **Other Applications Made**

39. None at present

#### **Legal Advisers dealing with this Claim**

40. Isabella Freeman Assistant Chief Executive (Legal), London Borough of Tower Hamlets Town Hall Mulberry Place, 5 Clove Crescent, London E14 2BG and James Goudie QC and Simon Forshaw 11 Kings Bench Walk Temple London EC4Y 7EQ.

#### **Address of Reply and Service of Court Documents**

41. Isabella Freeman Assistant Chief Executive (Legal), London Borough of Tower Hamlets, Town Hall, Mulberry Place, 5 Clove Crescent, London E14 2BG.

#### **Period for Reply**

42. Please reply substantively within 14 days of the date of this letter.

Yours sincerely



**Isabella Freeman**  
**Assistant Chief Executive (Legal) & Monitoring Officer**

cc David Higgins Olympic Delivery Authority

**Kevan Collins**  
**Chief Executive**