

Committee(s):	Date(s):	Item no.
Planning and Transportation Committee	8 October 2018	
Subject: Redevelopment of 21 Moorfields - Acquisition of Land for Planning Purposes		Public
Report of: Chief Planning Officer		For Decision
Report author: Luke Cutfield, Comptroller and City Solicitor's Department		
Ward (if appropriate): Coleman Street		
<p style="text-align: center;"><u>Summary</u></p> <ol style="list-style-type: none"> 1. This report seeks your approval for the acquisition of land for planning purposes by agreement under section 227 of the Town & Country Planning Act 1990 (the TCPA) (S227) enabling the operation of powers under Section 203 of the Housing & Planning Act 2016 (the HPA2016) (S203) to facilitate the carrying out of the redevelopment of 21 Moorfields (the Redevelopment Site) (shown edged red on the plan at Appendix 3). 2. LS 21 Moorfields Limited (the Owner) has asked if the City would be prepared to consider intervening by utilising the powers under S227 to enable reliance on the new powers in S203. For this to occur it would be necessary for the City to acquire an interest in the Redevelopment Site, and the City's compensation liabilities to be indemnified by the Owner. 3. This report evaluates the request against the relevant criteria, concludes that the tests are met, and recommends agreeing the request. <p>Recommendation</p> <p>It is recommended that Planning and Transportation Committee authorise acquisition of an interest in the Redevelopment Site by the City under S227 in order to engage powers under S203 for the planning purpose of facilitating the carrying out of the revised development (as described in paragraph 4 of the Main Report below) (the Revised Development) and subsequent disposal of that interest to the Owner (or an associated company) under section 233 of the TCPA.</p> <p>Subject to:</p> <ol style="list-style-type: none"> (i) the City Surveyor being satisfied, following receipt of Counsel's opinion, that the risks associated with the transaction are acceptable; (ii) there being a suitable Deed of Indemnity (as described in paragraph 22) (Indemnity) in place satisfactory to the City Surveyor; and (iii) the acquisition and disposal referred to above being substantially in accordance with the arrangements in Appendix 2 to this report with authority being delegated to the City Surveyor to agree final terms. <p>(the Recommendation)</p>		

Main Report

Background

- 1) The City granted planning permission for a scheme at the Redevelopment Site on 25 November 2015 under reference 14/01179/FULEIA (the **Original Development**). On 2 June 2015 the City resolved to rescind the existing city walkway known as Moorfields Highwalk to enable the Original Development to proceed, subject to a Section 106 Agreement (the **Original Section 106 Agreement**) providing for re-provision of the city walkway. The Original Section 106 Agreement was completed, planning permission issued and city walkway rescission put in train, on 25 November 2015. The Development was supported by the Mayor.
- 2) The owners of the Redevelopment Site wished to commence preparatory works in respect of the Original Development in April 2016 in order to maximise the ability to deliver the completed development to the shortest programme by 2020, and to complete it with the minimum delay after Crossrail's opening at Moorgate. The owners advised at that time that the programme was at risk due to the inability to settle and conclude legal agreements in respect of a significant number of remaining rights of light claims, and the prospect that those enjoying the rights of light may be able to pursue injunctive relief. As a result, reports were made to the Planning and Transportation Committee on 10 March 2016 and the Policy and Resources Committee on 17 March 2016 respectively, seeking approval in principle for the potential acquisition of land for planning purposes by agreement under S227 enabling the operation of powers under section 237 of the TCPA (**S237**) to facilitate the carrying out of the Original Development. Those Committee approvals (the **Original Approvals**) were granted.
- 3) Since the Original Approvals the Owner has secured an agreement for lease with Deutsche Bank for its London HQ that is conditional on planning permission being granted for a building that causes a similar interference to the light enjoyed by the impacted properties to that in the permission for the Original Development at the Redevelopment Site. Deutsche Bank had particular bespoke requirements (such as the need for trading floors) in the building for it to serve as its new London HQ that necessitated the changes. The City granted planning permission for the revised scheme which accommodates Deutsche Bank's requirements on 4 May 2018 under reference 17/01095/FULEIA. The agreement for lease with Deutsche Bank is now unconditional.
- 4) The planning permission for the Revised Development is for the following (see **Appendix 4** for an image):
 - i) Construction of a mixed-use development above and around the new Crossrail station entrance to provide office space and a landscaped public square fronted by retail units.
 - ii) A new City Highwalk located on the southern edge of the development at podium level to provide a direct route between Moorfields/Moorgate Station and the Barbican.
 - iii) An eastern building, fronting Moorfields, varying in height between 8 and 16 storeys (including mezzanine levels) above podium level with the top two storeys enclosing mechanical plant. A western building, fronting Moor Lane, rising to 3 storeys above podium level.
 - iv) The proposed floorspace is: office (Class B1) space [63,008sq.m GEA], retail (Use Class A1/A3/A4) space [182sq.m GEA].
 - v) Both new buildings would be serviced from a loading bay in Moor Lane with a secondary "Post Room" provision for couriers on Fore Street Avenue. No car or motor cycle parking is proposed. Pedal cycle parking and changing facilities are provided.

- 5) As set out in the Chief Planning Officer's report to the Planning and Transportation Committee of 20 February 2018, the Revised Development was considered to be in substantial compliance with the policies that relate to it and in particular to support the strategic objective of the City to promote the square mile as the leading international financial and business centre.
- 6) The scheme provides an employment led mixed-use development that would provide an increase in high quality office and retail floorspace and a London HQ for a key German global banking and financial services company. The new city walkway provides a good replacement for the existing highwalk. The public square would provide an attractive feature and an adequate replacement for former city walkway spaces.
- 7) Since the Original Approvals, S237 has been replaced by S203. In December 2016 Court of Common Council reaffirmed and updated arrangements previously adopted in respect of S237, to consider requests to engage the powers on a case by case basis. Consideration was delegated to the Planning and Transportation Committee, and it was clarified that wherever feasible and appropriate, the City would be expected to demonstrate that affected rights holders have been appropriately advised of the proposed resolution, made aware of any report, and provided with a relevant contact at the City to whom they can direct comments.

Proposal

- 8) A right of light is an interest in land (i.e. an easement) which entitles a neighbouring landowner (the **Affected Owner**) to enjoy light across a neighbouring site. Any development which interferes with that right would constitute a breach of the easement that would entitle the Affected Owner to claim an injunction preventing development or damages for the effect of the light lost as a result of the interference.
- 9) The risk that a person or person entitled to rights of light may seek and/or obtain an injunction restricting the proposed development can be overcome by engaging the provisions contained in S203 and thereby conferring statutory authority to carry out the works notwithstanding the interference with the rights to light. The operation of S203 is described in the Legal Implications section of this report.
- 10) The Owner has asked if the City would be prepared to consider acquiring an interest in the Redevelopment Site for the planning purpose of facilitating the carrying out of the Revised Development, so as to engage the provisions of S203. Such interest would be effectively transferred back to the Owner who would be able to proceed with Revised Development. The Owner's request is annexed at **Appendix 8**. Draft documentation in respect of recommendations (ii) and (iii) has been prepared by the Owner's lawyers and the City Solicitor, to be completed as soon as possible following a resolution to accept the Recommendation.

Considerations

- 11) In making a decision as to whether to acquire an interest in the land for the planning purpose of the Revised Development, the City must be satisfied that there is a compelling case in the public interest that the powers conferred by S203 be engaged in order that the building or use proposed can be carried out within a reasonable time. The criteria to be applied in deciding whether there is such a compelling case are set out and evaluated in **Appendix 1**. The conclusion is that it is considered the tests are met and the powers should be engaged.

Proposed acquisition and disposal

- 12) The proposed terms are summarised at **Appendix 2** and are considered acceptable by the City Surveyor, subject to his approval of the final details, Counsel's forthcoming opinion and the Indemnity being in place.

Legal implications

- 13) The City may acquire an interest in the land to be developed by agreement under Section 227 TCPA. Such acquisition must be for a purpose for which the City may be authorised to acquire land under Section 226 TCPA. The purposes for which land may be acquired are defined in Section 226(1) as follows:
 - (a) if the authority think that the acquisition will facilitate the carrying out of development / redevelopment or improvement on or in relation to the land; or
 - (b) if the land is required for a purpose which it is necessary to achieve in the interests of proper planning of an area in which the land is situated.
- 14) In this case, the purposes fall within the ambit of section 226(1)(a) as the carrying out of the scheme would be facilitated as described in this report.
- 15) But a local authority must not exercise the power under paragraph (a) unless they think that the development, redevelopment or improvement is likely to contribute to the promotion or improvement of one or more of the economic, social or environmental well-being of their area. The City would need to conclude that the acquisition would satisfy these tests to take the matter further. Advice on this is provided in part (iii) of **Appendix 1**.
- 16) If land is acquired by a local authority and the local authority could acquire the land compulsorily for the purposes of the building or maintenance work, and where there is planning consent for the building or maintenance work, and the building or maintenance work is for purposes related to the purposes for which the land was acquired by the local authority, S203 provides that the carrying out of the building or maintenance work on that land is authorised notwithstanding that it involves interference with a relevant right or interest, which includes rights to light such as those under consideration in this case. Where interference with rights is authorised, compensation is payable. Such compensation is based upon the diminution in value of the dominant owner's interest, as per section 204 of the HPA2016.
- 17) The City would have the power to dispose of an interest in land acquired by agreement under S227 by virtue of Section 233 of the TCPA. It is not necessary to justify acquisition for the authority to carry out the development itself. A site may be acquired with a view to onward disposal. Disposal may take place under Section 233 in such manner and subject to such conditions as appear to the City to be expedient in order:
 - i) to secure the best use of that or other land and any buildings or works which are to be erected or carried out on it (whether by themselves or by any other person); or
 - ii) to secure the erection, construction or carrying out on it of any building or works appearing to them to be needed for the proper planning of the area.
- 18) The disposal must be at best consideration that can reasonably be obtained. The City Surveyor is satisfied that due to the circumstances and related terms of the acquisition and disposal, this test will be met.
- 19) The leasehold interest in the land is owned by LS 21 Moorfields Limited from whom title would be acquired. Simultaneously with the acquisition of the leasehold interest from LS 21 Moorfields Limited, the City will grant an underlease of the same land back to LS 21

Moorfields Limited. The underlease will replicate LS 21 Moorfields' obligations under the leasehold interest. It is envisaged that the City will hold the leasehold interest for up to 45 working days before title in the leasehold interest would be transferred back to LS 21 Moorfields. The freehold is to be retained by London Underground Limited and Transport for London.

- 20) If the acquisition takes place as proposed the provisions of S203 will be engaged as:
- i) There is planning consent for the Revised Development
 - ii) the land will, at a time after 13th July 2016 have been acquired by a specified authority (such authorities include a local authority)
 - iii) under the powers conferred on it by section 226(1)(a) of the Town and Country Planning Act 1990 the authority (the City) could acquire the land compulsorily for the purposes of the building work permitted by the planning permission granted for the Revised Development.
 - iv) The building work is for purposes related to the purposes for which the land was acquired.

Financial and risk implications

- 21) In implementing S203 arrangements and disposing of any interest acquired under S227 back to the Owner, the City needs to be satisfied that all liabilities and costs arising from the arrangements (including any compensation liabilities falling to the City and potential costs associated with undertaking negotiations in relation to proceedings brought in the Lands Tribunal (the Upper Tribunal (Lands Chamber)) can be met by the Owner. S204 of the HPA2016 provides that the liability to pay compensation (if not discharged by the Owner) would be enforced against the City.
- 22) Counsel's opinion has been sought on the risks associated with the transaction. The Recommendation is therefore sought subject to the City Surveyor being satisfied that these risks are acceptable. The risks will be addressed through the Owner giving an Indemnity under which the Owner will indemnify the City against all matters arising from the sale and leaseback transaction, the use of S203 and the associated documentation. The Indemnity will include assurances that the highest offers made to date to each of the individual owners as compensation for any interference with rights of light which may arise as a result of the Revised Development will be honoured by the Owner. The Owner has agreed to provide this Indemnity (with Land Securities Properties Holdings Limited (**LSPH**) acting as guarantor) to the City, however, the precise terms have yet to be agreed.
- 23) The City Surveyor is satisfied that reasonable attempts have been made by the Owner to settle any claims which may be made by those holding all of the remaining interests and that the risks associated with the property transaction are acceptable in principle, subject to Counsel's forthcoming opinion. Officers will keep the Committee updated on this matter.

Consultees

- 24) The City Planning Officer, City Surveyor, Town Clerk, Chamberlain and Comptroller & City Solicitor have been consulted in the preparation of this report. All affected properties which benefit from rights of light likely to be subject to injunctable infringements are listed at **Appendix 5**, and all Affected Owners have been consulted as detailed in part (ix) of **Appendix 1**.

Conclusions

25) It is considered that the potential acquisition of the Redevelopment Site for the planning purposes of the Development and the ability to use powers under S203 of the HPA2016 should be approved on the following basis:

- This Committee resolved in March 2016 to approve the use in principle of S237 of the TCPA (which is now superseded by S203 HPA2016) to appropriate the Redevelopment Site for planning purposes and its sale back to the owners, when the owners were proposing a similar scheme in rights of light terms (albeit one that did not yet have a tenant). That scheme has been partially implemented at the Redevelopment Site with the existing buildings having been demolished, enabling works within Moorgate underground station to be completed, the city highwalk being temporarily closed and the piling work ongoing with 50% of the piles installed to as at 31 August 2018.
- It is considered desirable for the Revised Development to progress and be completed as soon as possible, in particular to secure benefits to the amenity of the area with the addition of the new building and provision of public realm enhancements; productive use of a largely vacant site, provision of development above the buildings demolished for Crossrail works, thereby filling an unsightly and wasteful townscape gap around and above a key transport hub, and significant employment generation in immediate proximity to a new Crossrail interchange.
- The Revised Development would also realise the potential for rejuvenation of the area. It would be detrimental to the rejuvenation of the area if the site remains vacant and undeveloped for any considerable period of time after the Crossrail station opens.
- The size and configuration of the new office space together with securing the occupancy of Deutsche Bank would be of benefit to the business community generally and would contribute to the targets contained in policy CS1 of the City of London Local Development Framework.
- All of the Considerations set out in **Appendix 1** have been properly addressed and on balance, the outcomes of the Considerations support the Recommendation.
- The City Surveyor is satisfied that the remaining Affected Owners either: (a) are not prepared to relinquish those rights (by agreement on reasonable terms and within a reasonable timeframe); and/or (b) where in principle terms have been agreed, will not have entered into enforceable deeds of release within the necessary timeframe, in both cases to achieve practical completion in a timely and orderly fashion in accordance with the Owner's and Deutsche Bank's programme. The City Surveyor has confirmed that the proposed terms of the acquisition and disposal and of the Indemnity are considered acceptable in principle.
- Affected Owners who have rights of light infringed will be entitled to compensation.

Background papers:

Papers	Committee(s)	Date
1. Redevelopment of 21 Moorfields – Potential Acquisition of land for Planning Purposes	Report to Planning and Transportation Committee	10 March 2016
	Report to Policy and Resources Committee	17 March 2016

2. Rights of Light Issues Affecting Development – Update	Report to Planning & Transportation Committee	28 November 2016
	Report to Court of Common Council	8 December 2016
3. Redevelopment of 21 Moorfields – Application for planning permission	Report to Planning and Transportation Committee	20 February 2018

Appendices:

1. Relevant Criteria and Evaluation
2. Terms of Acquisition and Disposal
3. Redevelopment Site Plan
4. Image of Revised Development
5. List of affected properties
6. Extract from the 20 February 2018 Committee report evaluating the daylight/sunlight impacts [180] – [212]
7. Cut back drawings
8. Owner's request to use S203

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