

Report – Planning and Transportation Committee

Rights of Light Issues Affecting Development

To be presented on Thursday, 8 December 2016

*To the Right Honourable The Lord Mayor, Aldermen and Commons
of the City of London in Common Council assembled.*

SUMMARY

In 2011 the Court of Common Council adopted an approach to the exercise of planning powers in relation to rights of light, easements and other rights attached to land. This approach stated that, in appropriate cases, planning powers may be used to assist delivery of developments in the City which achieve public benefit by removing the risk of the construction of such developments being prevented by injunction. Following a recent change to statutory provisions in Section 203 of the Housing and Planning Act 2016 (“S.203”), it is proposed that Members continue to support this approach.

The recommendation was supported by your Planning and Transportation Committee on 28 November 2016.

RECOMMENDATION

That Members approve the continuation of the arrangements for exercising the Corporation’s powers to override rights of light and over rights under the new statutory provisions in Section 203 of the Housing and Planning Act 2016 (“S.203”) by resolving as follows:

- a) Acquisitions of interests in land under S.227 Town and Country Planning Act 1990 or appropriations for planning purposes, may be considered on a case by case basis in order to engage S.203 powers to allow developments to proceed (where they would otherwise be inhibited by injunctions or threats of injunctions prohibiting infringements of rights of light) subject to: (i) such development being in the public interest, such public interest being sufficient to justify interference with any private rights and proportionate; (ii) the relevant criteria being met (Appendix 1) (iii) all financial liabilities of the City being indemnified; and (iv) where feasible and appropriate in the circumstances of the case, prior consultation being carried out in accordance with paragraph 6 of this report.
- b) Where such acquisitions or appropriations are so considered on a case by case basis, the Planning and Transportation Committee be authorised to determine whether such acquisition or appropriation may be authorised.
- c) Where the Planning and Transportation Committee determine that such acquisition or appropriation be authorised they may delegate the determination of such matters as they see fit and the final decision to the Town Clerk, in consultation with the Chairman and Deputy Chairman of that

Committee. The matters to be determined by the Town Clerk may include (i) whether adequate attempts have been made to remove injunction risks by negotiating the release of affected rights of light by agreement; (ii) whether those entitled to rights of light are prepared by agreement (on reasonable terms and within a reasonable time) to permit infringements of those rights and (iii) the terms on which the acquisition or appropriation is to proceed.

MAIN REPORT

1. Due to the dense built form in the City and planning policy advocating efficient use of scarce land resources, developments and redevelopments within the Square Mile sometimes involve infringements of rights of light, and other rights.
2. Prior to 2010, injunctions were often avoided through developers agreeing with affected neighbours for the release of rights of light upon payment of compensation, allowing development to proceed. However, a court ruling in 2010 increased the risks of development being impeded due to Rights of Light infringements. In June 2011 the Court of Common Council agreed an approach towards assisting in the delivery of development using Section 237 of the Town and Country Planning Act 1990 (“S.237”) in appropriate cases and delegated decisions on whether to engage S.237 to the Planning and Transportation Committee and the Policy and Resources Committee. In December 2011 the Court of Common Council delegated decisions whether to engage S.237 to Planning and Transportation Committee alone, on the recommendation of the Policy and Resources Committee.
3. In July 2016, S.237 was repealed and a new, similar power was introduced in Section 203 of the Housing and Planning Act 2016 (S.203), aimed at addressing some minor issues/ambiguities about S.237, but not implementing any substantive change. Changes between S.237 and S.203 include: (i) S.203 is engaged where land is held by other public bodies (in addition to planning authorities); (ii) a previous exclusion for statutory undertakers is removed; (iii) an exclusion is provided for the National Trust/ National Trust land; (iv) S.203 is only engaged in circumstances where the authority “could acquire the land compulsorily” for the purposes of the building or maintenance work which is to be carried out; and (v) the S.203 powers are specifically limited to situations where the interference relates to the purpose for which the land was acquired/appropriated.
4. Given the introduction of new legislation, the 2011 resolutions relating to S.237 should be updated to cover the new provisions in S.203, if the City wishes to continue the general approach adopted in 2011.
5. In recognition of the City's local planning authority role in helping deliver development which meets planning objectives, it is considered appropriate that requests to implement land acquisition or appropriation arrangements which engage S.203 powers should continue to be considered on a case by case basis. It is expected that such requests should be supported by a full analysis which explains why exercise of the City's powers to acquire or appropriate are

necessary, and why there is a compelling case in the public interest to do so. It is expected that such requests will address the criteria developed to evaluate applications (Appendix 1). It is proposed that such requests should continue to be reported to Planning and Transportation Committee for decision, where it is considered in the public interest, such public interest being sufficient to justify interference with any private rights and proportionate, adopting the criteria and tests which have been in place since 2011.

6. It is also proposed that the policies developed for applications under S.237 in relation to compensation and consultation be continued under S.203, namely;

Compensation – The Upper Tribunal (Land Courts) to determine disputes in “diminution in value” payments. The City must however be satisfied prior to engaging S.237 (S.203) that adequate attempts have been made by the developer to remove injunction risks by negotiation.

Consultation –Wherever feasible and appropriate in the circumstances of the case the developer will be expected to demonstrate that rights holders have been appropriately advised of the proposed resolution, made aware of any report, and provided with a contact at the City to whom they can direct comments.

7. It is likely that agreement on the detailed terms on which an acquisition or appropriation should proceed would continue to be delegated by the Planning and Transportation Committee to the Town Clerk in consultation the Chairman and Deputy Chairman of the Planning and Transportation Committee. On occasion, decisions as to whether adequate steps have first been taken by the developer to remove the injunction risks by negotiation may also be delegated to the Town Clerk in consultation with the Chairman and Deputy Chairman. This reflects some of the past resolutions.
8. The recommended action is proposed in order to achieve planning purposes as expressed in local and national policy (see Appendix 2).

Appendices

Appendix 1: Criteria for acquisition/appropriation for the purpose of engaging SS.227/203

Appendix 2: Planning Policies

All of which we submit to the judgement of this Honourable Court.

DATED this 17th November 2016.

SIGNED on behalf of the Committee.

Christopher Michael Hayward
Chairman, Planning and Transportation Committee

CRITERIA

Introduction

It is recognised that the acquisition or appropriation of land to engage S.203 involve interference with human rights: namely, the right to peaceful enjoyment of possessions and, in the case of affected residential property, the right to respect for private and family life and home. This is the case notwithstanding that where such powers are exercised, compensation is payable. Therefore, such powers should not be exercised unless a number of criteria are satisfied and S.203 specifically provides that the authority to interfere with rights or breach restrictions conferred by the section will only apply in cases where the authority could acquire the land compulsorily for the purposes of the building or maintenance work. Whether the relevant criteria are satisfied will depend upon the site specific circumstances. The criteria, which must be carefully considered and weighed in each case, are set out at 1 – 2 below. They broadly require that the local planning authority be satisfied that there is a compelling case in the public interest for the exercise of the powers and interference with property rights and that the public interest to be achieved is proportionate to the interference with private rights which would result.

Criteria

1. There is a compelling case in the public interest that the powers conferred by section 203 of the Housing and Planning Act 2016 be engaged in order that the building or maintenance work or use proposed can be carried out within a reasonable time, and in particular, that:
 - (i) There is planning consent for the proposed development;
 - (ii) Acquisition or appropriation and consequent engagement of section 203 of the Housing and Planning Act 2016 will facilitate the carrying out of development, redevelopment or improvement on or in relation to land, and in particular the proposed development for which planning consent has been obtained, or similar development;
 - (iii) The development, redevelopment or improvement will contribute to the promotion or improvement of the economic, social or environmental wellbeing of the authority's area and those benefits could not be achieved without giving rise to all of some of the infringements - therefore it is in the public interest that the land be acquired by the City or appropriated by them for planning purposes, so as to facilitate the development proposed or similar development.
 - (iv) There will be infringements of one or more relevant rights or interests as defined in section 205(1) of the Housing and Planning Act 2016 or breach of a restriction as to user of land which cannot reasonably be avoided;
 - (v) The easements to be interfered with cannot reasonably be released by agreement with affected owners within a reasonable time (and adequate evidence of satisfactory engagement, and where appropriate negotiation, has been provided to the City) ;
 - (vi) The ability to carry out the development, including for financial or viability reasons, is prejudiced due to the risk of injunction, and adequate attempts have been made to remove the injunction risks;
 - (vii) A decision to acquire or appropriate in order to engage section 203 of the Housing and Planning Act 2016 would be broadly consistent with advice given in the DCLG

Guidance on Compulsory Purchase (2015) (and any replacement thereof) so far as relevant.

- (viii) The use of the powers is proportionate in that the public benefits to be achieved so as to outweigh the infringement of human rights;
 - (ix) The developer has consulted with rights holders regarding the engagement of section 203 wherever feasible and appropriate in the circumstances of the case.
2. The authority could acquire the land compulsorily for the purposes of the building or maintenance work or the use of the land (and where the land in issue is currently owned by the authority it is to be treated for these purposes as not currently owned by the authority);

PLANNING POLICIES

The London Plan includes the following relevant policies:

- i) **Policy 2.10 “Central Activities Zone – Strategic Priorities”** which says that **the Mayor will and boroughs should sustain and enhance the City of London as a strategically important globally-oriented financial and business services centre**
- ii) **Policy 2.11 “Central Activities Zone – Strategic Functions”** which says the **Mayor will and boroughs should secure completion of essential new transport schemes necessary to support the roles of CAZ, including Crossrail, and realise resultant uplifts in development capacity to extend and improve the attractions of the Zone**
- iii) **Policy 4.2 “Offices”** which says that **the Mayor will, and boroughs should recognise and address strategic as well as local differences in implementing this policy to meet the needs of the central London office market by sustaining and developing its unique and dynamic clusters of “world city” functions and by encouraging renewal and modernisation of the existing office stock in viable locations to improve its quality and flexibility**

1 The City of London Local Plan includes the following policies:

- i) Under Implementation And Delivery it states that the City Corporation will, where necessary, use its land and property ownership to assist with site assembly and use its compulsory purchase powers to enable the high quality development the City needs; and
- ii) Strategic Objective 1 which is “to maintain the City’s position as the world’s leading international and financial and business centre”
- iii) Core Strategy Policy CS1 which is: “To ensure the City of London provides additional office development of the highest quality to meet demand from long term employment growth and strengthen the beneficial cluster of activities found in and near the City that contribute to London’s role as the world’s leading international financial and business centre, by:
 - Increasing the City’s office floorspace stock by 1,150,000 m2 gross during the period 2011 – 2026 to meet the needs of projected long term economic and employment growth, phased as follows:
 - 2011 – 2016:650,000 m2
 - 2016 – 2021:250,000 m2
 - 2021 – 2026:250,000 m2

A pipeline of at least 750,000 m2 gross office floorspace with planning permission but not yet commenced will be maintained to provide office occupier choice.

- Encouraging the assembly and development of large sites, where appropriate, to meet the accommodation needs of the City's biggest occupiers, protecting potential large office sites from piecemeal development and resisting development that would jeopardise the future assembly and delivery of large sites.
 - Encouraging the supply of a range of high quality office accommodation to meet the varied needs of City office occupiers.
- iv) Policy DM 1.2 which is "To promote the assembly and development of large office schemes in appropriate locations".
- v) Policy DM 1.3 which is "To promote small and medium sized businesses in the City".
- vi) Policy DM 1.5 which is "To encourage a mix of commercial uses within office developments which contribute to the City's economy and character and provide support services..."

Policy DM 10.7

- 1) To resist development which would reduce noticeably the daylight and sunlight available to nearby dwellings and open spaces to unacceptable levels, taking account of the Building Research Establishment's guidelines
- 2) The design of new developments should allow for the lighting needs of intended occupiers and provide acceptable levels of daylight and sunlight

Supporting text paragraph 3.10.42 states that 'If a development is considered acceptable in planning terms and has planning permission, but it not proceeding due to rights to light issues, the City Corporation may consider acquiring interests in land or appropriating land for planning purposes to enable development to proceed.'

Policy DM 10.8

To achieve an environment that meets the highest standards of accessibility and inclusive design in all developments (both new and refurbished), open spaces and streets, ensuring that the City of London is:

- Inclusive and safe for all who wish to use it, regardless of disability, age, gender, ethnicity, faith or economic circumstance;
- Convenient and welcoming with no disabling barriers, ensuring that everyone can experience independence without undue effort, separation or special treatment;
- Responsive to the needs of all users who visit, work or live in the City, whilst recognising that one solution might not work for all.