

Committee(s):	Date(s):	Item no.
Planning and Transportation Committee	30 October 2018	
Subject: Redevelopment of 6-8 Bishopsgate and 150 Leadenhall Street - Acquisition of Land for Planning Purposes		Public For Decision
Report of: Chief Planning Officer		
Report author: Luke Cutfield, Comptroller and City Solicitor's Department		
<div>Summary</div> <div><div>1.</div><div>This report seeks your approval in principle for the acquisition of an interest in 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 the site at the corner of Bishopsgate and Leadenhall Street (as described in paragraph 3 of the Main Report below) (the Development) with the address 6-8 Bishopsgate and 150 Leadenhall Street (shown edged red on the plan at Appendix 3) (the Redevelopment Site).</div></div> <div><div>2.</div><div>MEC London Property 2 (Nominee 1) Limited and MEC London Property 2 (Nominee 2) Limited (the Developer), as owner of the Redevelopment Site has asked if the City would be prepared to consider intervening by utilising the powers under S227 to enable reliance on the 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 Developer.</div></div> <div><div>3.</div><div>This report evaluates the request against the relevant criteria, concludes that the tests are met, and recommends agreeing the request.</div></div>		
<div>Recommendation</div> <div>It is recommended that SUBJECT TO the Town Clerk being satisfied that there is an appropriate Indemnity in place and that it is necessary in order to facilitate the carrying out of the Development (including consideration of whether those entitled to rights of light and other easements and the benefit of restrictive covenants are prepared by agreement (on reasonable terms and within a reasonable period) to permit infringements or breach of the restrictions in time to achieve practical completion by 2022) that the Town Clerk be given delegated authority, in consultation with the Chairman and Deputy Chairman of the Planning and Transportation Committee, to approve the following:</div> <div><div>(i)</div><div>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 Development and subsequent disposal of that interest to the Developer (or an associated company) under section 233 of the TCPA; and</div></div> <div><div>(ii)</div><div>the terms on which the acquisition and disposal referred to above are to be made.</div></div> <div>(the Recommendation)</div>		

Main Report

Background

- 1) The City granted planning permission for a scheme at the Redevelopment Site on 17 December 2015 under reference 15/00443/FULEIA (the **Original Development**). This was accompanied by a section 106 agreement of the same date. The City subsequently resolved on 3 October 2017 to grant planning permission (pursuant to application 17/00447/FULEIA) for an enlarged version of the Original Development which involves the redevelopment of the Redevelopment Site to provide a taller building than previously consented, subject to completion of a section 106 agreement, which was completed on 13 September 2018.
- 2) The Development stands to impact on the rights of light of a number of neighbouring property interests, as is relatively common for City redevelopment schemes. The Development would also breach a restrictive covenant which burdens part of the Redevelopment Site. The Developer has been seeking to agree terms with the owners of affected properties (the **Affected Owners**) since 2014 (when it began negotiating with the owner of the restrictive covenant).¹ Whilst the Developer has agreed terms with forty-six (46) of the Affected Owners (and is currently confident it eventually will agree terms in relation to the majority of the outstanding negotiations), so far agreements remain outstanding on forty (40) potentially injunctable interests (as set out in the list at **Appendix 5**). Of these interests, nineteen (19) owned by six parties are proving to be particularly complex and slow to resolve (for reasons that are explained in further detail in parts (iv) and (v) of **Appendix 1** below). Accordingly, for the reasons explained in this report, the Developer now considers that the inability to remove the potential injunction risks associated with the rights of light and restrictive covenant enjoyed by these seven parties to be the principal impediment to the delivery of the Development within the proposed construction programme. In this regard, the Developer has come to the conclusion that the timely delivery of the Development will only be possible with the City's assistance in overcoming these potentially injunctable restrictive covenant and rights of light claims.
- 3) The planning permission for the Development is for the following (see **Appendix 4** for an image):
 - i) Demolition of existing buildings;
 - ii) Construction of a new building comprising lower ground level, three basement levels, ground floor plus part 10, 25 and 51 storeys including plant [221.2m AOD] to provide office (Class B1) use [85,892 sq.m GEA], flexible shop/café and restaurant (Class A1/A3/B1) uses [199 sq.m GEA], at part ground floor and level 1;
 - iii) The provision of a publicly accessible roof top viewing gallery [819 sq.m GEA] (sui generis) at level 50 with dedicated entrance at ground floor level; and
 - iv) The provision of hard and soft landscaping.

[providing a total of 87,355 sq.m GEA]
- 4) As set out in the Chief Planning Officer's report to the Planning and Transportation Committee of 3 October 2017,² the 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.

¹ Which is described in further detail in part (iv) of Appendix 1.

² Background Paper 2 to this report.

- 5) The scheme provides an employment led mixed-use development that would provide an increase in high quality office and retail floorspace. The publicly accessible viewing platform would provide an attractive public benefit.
- 6) In December 2016 Court of Common Council reaffirmed and updated arrangements previously adopted regarding consideration of requests to intervene to override injunctable interests. It was resolved that consideration would be given on a case by case basis using the criteria considered in this report. Consideration was delegated to the Planning and Transportation Committee, and it was resolved that where Planning and Transportation Committee determine an acquisition may be authorised they may delegate the determination of such matter as they see fit and the final decision to the Town Clerk in consultation with the Chairman and Deputy Chairman. The matters which may be determined by the Town Clerk were stated to include (i) whether adequate attempts have been made to remove injunction risk by negotiating the release of 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. Court of Common Council also 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

- 7) A right of light is an interest in land (i.e. an easement) which entitles a neighbouring landowner 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. A restrictive covenant is a restriction on the use of land imposed by a contract, and enforceable by the person with the benefit of the covenant.
- 8) The risk that a person or person entitled to a relevant right or interest or to the benefit of a covenant 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 or breaching the restriction as to user of the land. The operation of S203 is described in the Legal Implications section of this report.
- 9) The Developer 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 Development, so as to engage the provisions of S203. Such interest would be transferred back to the Developer (or an associated company) who would be able to proceed with the Development. The Developer's request is annexed at **Appendix 8**.

Considerations

- 10) In making a decision as to whether to acquire an interest in the land for the planning purpose of the 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**. It is considered that these tests have been met subject to the conditions in the Recommendation being fulfilled and subject to the determinations delegated to the Town Clerk.

Proposed acquisition and disposal

- 11) It is recommended that authority to agree the terms of the acquisition and disposal be delegated to the Town Clerk taking account of advice from the City Surveyor and in

consultation with the Chairman and Deputy Chairman of the Planning and Transportation Committee.

Legal implications

- 12) 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 set out 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.
- 13) In this case, the purposes fall within the ambit of section 226(1)(a) as the acquisition of the land would facilitate the carrying out of the redevelopment scheme as described in this report.
- 14) 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**.
- 15) 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 or breach of a restriction as to the user of land, which includes rights to light and restrictive covenants such as those under consideration in this case. Where interference with rights or breach of restriction as to user 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.
- 16) 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 intend 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.
- 17) Unless consent is obtained from the Secretary of State, the disposal must be at the best consideration that can reasonably be obtained. If the Recommendation is accepted, the Town Clerk will determine (in consultation with the City Surveyor and the Chairman and Deputy Chairman of the Planning and Transportation Committee) the specific terms on which the acquisition and disposal are to be made and will only give their approval for the transaction if they are satisfied that this test will be met.
- 18) If the acquisition takes place as proposed the provisions of S203 will be engaged as:

- i) There is planning consent for the 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 such as the City Corporation)
- iii) under the powers conferred on it by section 226(1)(a) of the TCPA the authority (the City) could, on being authorised to do so by the Secretary of State, acquire the land compulsorily if they think that acquisition will facilitate its redevelopment. In this case it is the view of officers that such acquisition would facilitate the redevelopment of the Redevelopment Site.
- iv) The building work is for purposes related to the purposes for which the land was acquired.

Financial and risk implications

- 19) In implementing S203 arrangements and disposing of any interest acquired under S227 back to the Developer, the City would need 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 Developer. S204 of the HPA2016 provides that the liability to pay compensation (if not discharged by the Developer) would be enforced against the City.
- 20) The risks will be addressed through the Developer giving an Indemnity under which the Developer will indemnify the City against all matters arising from the transaction. . The Indemnity will include assurances that the highest offers made to date to each of the individual owners as compensation for any interference with their relevant rights or interests which may arise as a result of the Development will be honoured by the Developer.
- 21) It is proposed that the terms of an Indemnity be delegated to the Town Clerk upon advice from the City Surveyor and City Solicitor and in consultation with the Chairman and Deputy Chairman of the Planning and Transportation Committee

Consultees

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

Conclusions

- 23) 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 should be approved in principle on the following basis:
 - It is considered desirable for the Development to progress and be completed in 2022 in accordance with the development programme (as explained in paragraph 3 of **Appendix 1**) (the **Development Programme**), in particular to secure the addition of the new building, provision of the publicly accessible viewing gallery and to provide significant employment generation and employment floorspace to meet anticipated demand.
 - The Development would make more efficient use of the Redevelopment Site as compared to the disjointed existing buildings (being office buildings comprising of 2

podium floors and 20 upper floors at 6-8 Bishopsgate and 6 upper floors at 150 Bishopsgate).

- The size and configuration of the new office space 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 addressed or delegated and on balance, the relevant criteria are satisfied support the acquisition proposed in the Recommendation subject to the matters to be delegated to the Town Clerk for further consideration.
- Affected Owners who have rights or interests infringed will be entitled to compensation.

Background papers:

Papers	Committee(s)	Date
1. Rights of Light Issues Affecting Development – Update	Report to Planning & Transportation Committee	28 November 2016
	Report to Court of Common Council	8 December 2016
2. Redevelopment of 6-8 Bishopsgate and 150 Leadenhall Street – Application for planning permission	Report to Planning and Transportation Committee	3 October 2017

Appendices:

1. **Relevant Criteria and Evaluation**
2. **Plan depicting the Burdened Land**
3. **Redevelopment Site Plan**
4. **Image of Development**
5. **Schedule of affected properties**
6. **Extract from the 3 October 2017 Committee report evaluating the daylight/sunlight impacts**
7. **Cut back drawing**
8. **Developer's request to use S203**

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APPENDIX 1

Relevant Criteria and Evaluation

1. In accordance with the criteria endorsed by the Court of Common Council on 8 December 2016,³ 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 and in particular, that:
 - (i) There is planning consent for the proposed development;
 - (ii) Acquisition or appropriation and consequent engagement of S203 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 or 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 HPA2016 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 S203 would be broadly consistent with advice given in the DCLG Guidance on Compulsory Purchase (2015) (updated in February 2018) (the **DCLG Guidance**) (and any replacement thereof) so far as relevant;
 - (viii) The use of the powers is proportionate in that the public benefits to be achieved outweigh the infringement of human rights;
 - (ix) The developer and the City have consulted with rights holders regarding the engagement of S203 wherever feasible and appropriate in the circumstances of the case.

Each of these considerations is addressed using the same enumeration below.

(i) Planning permission

2. Planning permission was issued for the Development on 13 September 2018 under reference 17/00447/FULEIA.

³ Background Paper 1 to this report.

(ii) Facilitation of the Development by use of S203

3. Based on the evidence submitted by the Developer, the Development Programme cannot be met unless those entitled to relevant rights or interests agree to infringements or the infringements are authorised by S203. To maintain the programme in order to maximise the ability to deliver the completed development, including completion of demolition of the existing buildings in time to start construction in December 2018, with an expected completion date in 2022. Completion in 2022 is considered in the public interest due to anticipated imbalance between supply and demand for new stock at that time based on the City's Employment Trends, known active business requirements between 2020 - 2022 and Development Pipeline Research.⁴
4. In order to maintain the Development Programme, commitment to the ground works and foundations packages totalling approximately £24.5million needs to be made in the 4th Quarter of 2018 and the 1st Quarter of 2019. However, the Developer advises that having already expended approximately £36million in respect of the Development to date, the Developer is not able to make this further commitment whilst there is a significant risk to this investment in that a third party could seek an injunction restraining the developer from carrying out the Development. The Developer's view is that this risk can be satisfactorily addressed by the recommended "in principle" resolution, albeit subject to delegated matters, and by subsequent acquisition of the Redevelopment Site. The City Property Advisory team is satisfied that this is a credible and legitimate approach, far from unique to this Developer, and that the resolution is likely adequately to de-risk the scheme and enable continued investment, maximising the likelihood that the Development Programme will remain on track to help meet forecast demands in 2022.

(iii) Development in the public interest due to promotion of the economic, social or environmental wellbeing of the City

5. The recent planning history of the Redevelopment Site is outlined in the Background section of this report. The scheme will deliver an employment led mixed-use development that will enable the provision of an additional 52,718sq.m gross of B1 office floorspace over the existing buildings and 15,776sq.m more than the permission for the Original Development. The additional 52,718sq.m of additional office space equates to a projected employment generation of up to around 6,500 people. This calculation is based on the fact that it is common for businesses within the financial services sector to operate at densities and a rate of one person per 8sq.m NIA. In addition, the Development will provide public realm improvements. The Development is considered to be in substantial compliance with policies as discussed in more detail below.
6. 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

⁴ Employment Trends in the City of London (published by the City Corporation with underlying data from Office for National Statistics)

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.

7. The City of London Local Plan 2015 includes the following policies:

- i) Under “Implementation And Delivery” at paragraph 1.15, it states that the City 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.
- ii) Strategic Objective 1 which is: “to maintain the City’s position as the world’s leading international 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 in three five-year phases as follows:

Phase 1 - 2011 – 2016: 650,000 m2

Phase 2 - 2016 – 2021: 250,000 m2

Phase 3 - 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.

The target of 650,000 m2 in Phase 1 (2011/12 to 2015/16) equates to an average of 130,000 m2 per annum. For each of the financial years (apart from 2014/15) there was a net loss in office floorspace. This was due to significant demolition of floorspace to enable redevelopment schemes to be delivered.

In Phase 2 (2016/17 to 2020/21) a net gain target of 250,000 m2 was set, which equates to an average of 50,000 m2 per annum. For the financial years in 2016/17 there was a net loss of 61,600 m2 and in 2017/18 there was a net increase of 131,100 m2.

In Phase 3 (2021/22 to 2025/26) the projections are primarily based on a mixture of sites:

- where permission for redevelopment is granted but not commenced,
- where an application has been submitted but is awaiting a decision as at 31st March 2018,
- plus, the application of long term trends relating to sites known from pre-application discussions.

The projections suggest that during this phase there would be a broad balance between the net gain stock supply and the office stock target. The office

floorspace is projected to increase from 8,900,000 m² in 2011/12 to 10,500,000 m² in 2025/26.

As the Development would provide 52,718sq.m of additional office floorspace when completed, it stands to contribute in a meaningful way towards the office floorspace targets.

- 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.
 - Promoting inward investment and encouraging developers and businesses to invest and locate in the City.
- iv) Policy DM 1.2 which is "To promote the assembly and development of large office schemes in appropriate locations", states that the City will invoke compulsory purchase powers, where appropriate and necessary, to assemble large sites.
- v) Policy DM 1.3 which is "To promote small and medium sized businesses in the City", states that the City will achieve this by encouraging office designs which are flexible and adaptable to allow for sub-division to create small and medium sized business units.
- 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 for its businesses, workers and residents."
- vii) Policy DM 10.7 relating to sunlight and daylight includes the statement in supporting text paragraph 3.10.42 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 may consider acquiring interests in land or appropriating land for planning purposes to enable development to proceed."
8. The provision of the publicly accessible viewing gallery at level 50 is supported by the following policies in the London Plan and Local Plan:
- i) Policy 7.7 of the London Plan, which states at paragraph C that:
- "Tall and large buildings should:
- [...]
- incorporate publicly accessible areas on the upper floors, where appropriate"
- ii) Policy DM 10.3 which directs:
- "To encourage high quality roof gardens and terraces where they do not:
- immediately overlook residential premises;
 - adversely affect rooflines or roof profiles;

- result in the loss of historic or locally distinctive roof forms, features or coverings;
- impact on identified views.

Public access will be sought where feasible in new development.”

9. In conclusion, the acquisition of the Redevelopment Site for planning purposes pursuant to S227, so as to engage S203, will facilitate the carrying out of the Development which will contribute to the achievement and improvement of the economic well-being of the City as a whole (for example through the provision of offices) and of the environmental well-being of this part of the City (for example through the provision of the publicly accessible viewing gallery, and significant employment generation).
10. The Development has secured a substantial planning obligation package together with contributions to the Mayoral and City CIL schemes, including financial contributions towards transport, affordable housing, local training and employment, carbon offsetting and security (up to approximately £1.45 million in total); and
11. The key benefits of the Development are:
 - i) the provision of an employment led mixed-use development projected to accommodate up to around 6,500 additional people (when compared with the existing buildings on the site) and including retail to provide support services to the workforce in the area.
 - ii) the provision of around 85,892 sq.m (GEA) of high quality office space, which equates to 52,718 sq.m (GEA) of additional floorspace (when compared with the existing buildings on the site).
 - iii) the provision of a publicly accessible viewing gallery and public lifts to be maintained by the Developer.
 - iv) the efficient and productive use of the Redevelopment Site.
12. As demonstrated by the drawings attached to this report at **Appendix 7**, the Development it is not feasible to erect a building which gives rise to the benefits set out above and which avoids some or all of the rights of light infringements and/or is not in breach of the restrictive covenant. In particular there is no evidence that a viable scheme could be delivered in the Redevelopment Site, meet the aspirations for the site derived from planning policy, and avoid infringement of rights of light and the restrictive covenant. If the Development does not proceed, the benefits identified above will not be delivered. There are two additional interests that stood to suffer actionable infringements as a result of the Development (that did not suffer them as a result of the 2015 scheme). Infringements on these interests could have been avoided by implementing the Original Development. However, the Developer has advised that it has reached agreement with these two interests, so in practical terms, there stands to be the same number of actionable interests under both schemes.
13. In relation to the benefits outlined at paragraphs 11.(i) and (ii) above, these relate directly to the design and scale of the Development and are considered important in assisting the City to maintain and enhance its role as one of the world’s leading financial and business centres. This Development would stand to suit and accommodate tenants with relatively large floorspace requirements which is considered to promote Core Strategy Policy CS1.
14. The provision of the benefits identified in paragraph 11.(iii) above flow from the comprehensive redevelopment of the Redevelopment Site and will not be delivered as a package without the Development.

15. The provision of the benefits identified in paragraphs 11.(iii) and (iv) above flow from ensuring that the Development Programme is not delayed as a result of issues in settling the remaining rights and interests. It would be detrimental to the rejuvenation of the area if the Redevelopment Site remains vacant and/or undeveloped for any considerable period of time.
16. For the reasons given the Development is likely to contribute to the achievement of two of the objects identified in S226(1A) of the TCPA. It would bring about the promotion or improvement of the economic and environmental well-being of the City's area.

(iv) Infringement of rights by the Development cannot be reasonably avoided

Restrictive covenant

17. Part of the Redevelopment Site bears the burden of a restrictive covenant in favour of 145/146 and 147/148 Leadenhall Street. The restrictive covenant prohibits the construction of any building, wall, fence or other structure which exceeds 17.5 metres above Ordnance Datum (temporary scaffolding or plant excluded) on the land shown hatched green on the plan at **Appendix 2** to this report (the **Burdened Land**).
18. This restrictive covenant constitutes an unavoidable constraint on the development of part of the Redevelopment Site. Accordingly, the Developer has been trying for more than four years to negotiate a release from the restrictive covenant, in order to be able to develop the Burdened Land without complying with its terms.
19. The negotiations are well advanced, but there is no realistic prospect that that they will be finalised within the time frame identified for release of the next tranche of development funding so as to allow works to be carried out in accordance with the development programme set out at paragraph 3 above.

Rights of light

20. In terms of the history of negotiations with the Affected Owners, the Developer has advised the City that specialist rights of light surveyors (Waldrams) have been retained to advise on the impacts of the Development on light levels enjoyed by neighbouring properties.
21. In August 2017, having carried out the relevant technical analysis, Waldrams began to negotiate with Affected Owners with relevant rights of light infringements on behalf of the Developer. Waldrams identified 86 property interests with rights of light infringements (45 of which are considered to sustain potentially injunctable alterations in light) as a result of the Development. A schedule of the property interests and the status of negotiations for each is provided in **Appendix 5** to this report.
22. As a result of these negotiations, the Developer has successfully agreed or completed deeds of release in respect of 46 property interests out of the 86 affected. The Developer will honour the agreed terms of all such in principle settlements (subject in each case to the necessary contracts being agreed).
23. However, both legal and remaining commercial negotiations with other Affected Owners are proceeding slowly. The Developer has indicated that negotiations will continue in good faith with the interests in the remaining properties. Despite this commitment, the Developer is of the view that realistically, there is no prospect that agreement will be reached, and binding deeds of release entered into with the remaining Affected Owners to enable the Development Programme to be met for the following reasons:
 - i) The Developer remains a considerable distance apart from five parties in terms of coming to an agreement and as such, there is no reasonable prospect that agreements will be reached within the next few months, in time to meet the Development

Programme. This is not simply a result of disagreement on the appropriate compensation, it is also to do with the legal complexity and interpretation of who has the rights within the particular building and, therefore, how the compensation should be split between freeholder, leaseholder and occupier.

- ii) A number of the negotiations are with surveyors who need to take instruction from overseas investors. Responses are often significantly delayed with offers remaining responded to over a number of months. This is also the case for the restrictive covenant which needs to be acquired.
 - iii) The sheer volume of transactions required means that a considerable number of the negotiations are unlikely to be concluded by the time the Developer needs to commit to the initial works packages.
24. To date, all Affected Owners have had offers made to acquire their respective interests. All settlements agreed and best offers made to date would be honoured by the Developer. This would be secured in the Indemnity which will be required to be given prior to any acquisition. Affected Owners could also refer the level of compensation to the Lands Chamber. Before proceeding with any acquisition, the City would need to satisfy itself that all reasonable efforts had been made to release rights by agreement and offers issued in this regard would be reviewed to ensure all reasonable efforts had been made.
25. The impacts in planning terms, of the issues of daylight, sunlight and overshadowing were fully considered when this Committee resolved to approve the Development in October 2017. An extract from the 3 October 2017 Committee report evaluating the daylight/sunlight impacts is annexed at **Appendix 6**.

(v) Rights cannot reasonably be released by agreement

26. In deciding whether it is necessary to acquire an interest in land under S227 so as to engage the provisions of S203 and thereby facilitate the carrying out of the Development, consideration should be given to whether agreements to permit infringement can be reached with owners of affected properties with rights on reasonable terms and within reasonable timeframes. The Recommendation delegates this decision to the Town Clerk. As described under part (ix) the City has been in communication with affected rights holders and is satisfied that the Developer has acted reasonably to date. The City would normally wish to allow longer for further efforts to be pursued following its communication with rights holders. However, for the reasons given above relating to release of development funding and the public interest in securing completion in 2022, it is considered appropriate to recommend an in-principle resolution in advance of further efforts to secure negotiated releases being made and scrutinised by the City.

(vi) Development prejudiced due to risk of injunction

27. For the reasons set out above at paragraphs 3, 4 and 23, the carrying out of the Development is prejudiced by the risk of injunction. If the Developer is not in a position to make the required payments (as described in paragraph 4 above) due to a risk of injunction, then this stands to prejudice the Development Programme and the availability of new office space to meet anticipated demand in 2022.

(vii) Decision to engage S203 would be consistent with DCLG Guidance

28. The City has the power under section 226(1) of the TCPA to make an order to acquire the Redevelopment Site compulsorily. The advice given in the DCLG Guidance should be taken into account in deciding whether to acquire land in order to engage the provisions of S203. At paragraph 12, the DCLG Guidance states that a compulsory purchase order should only be made where there is a compelling case in the public interest. A similar approach should

be taken when deciding whether to acquire land for planning purposes in order to engage S203. Given that it is in the public interest that the Development should proceed (as discussed in part (iii) above), and the fact that the Development (or some similar development) will not proceed whilst the prospect of an injunction to restrain interference with rights to light or breach of the restrictive remains, there is a compelling case in the public interest that the Redevelopment Site should be acquired for planning purposes in order to engage the provisions of S203.

29. A confirming authority would expect the acquiring authority to demonstrate that they have taken reasonable steps to acquire all of the land and rights included in the Order by agreement. The Town Clerk would need to satisfy himself of this in consultation with the Chairman and Deputy Chairman and on advice from the City Surveyor before authorising acquisition under his delegated authority. Here, it would be appropriate to show the efforts undertaken by the Developer and in particular the attempts to acquire the relevant interests by agreement. In addition, the Developer has confirmed that after any resolution, it would continue to settle compensation at the highest monetary offer made to each relevant party to date, and this requirement is to be contained in the Indemnity provided to the City.
30. The DCLG Guidance also says that when making and confirming an order, acquiring authorities should be sure that the purposes for which the compulsory purchase order is made justify interfering with the human rights of those with an interest in the land affected. These issues are considered below in part (viii).

(viii) Public benefits associated with engagement of S203 outweigh infringement of human rights

31. Human Rights issues arise in respect of the proposed arrangements. An acquiring authority should be sure that the purposes for which the Redevelopment Site is to be acquired and for which rights are to be overridden sufficiently justify interfering with the human rights of those with interests in the land affected. Furthermore, following the introduction of the Human Rights Act 1998 the City is required to act in accordance with the European Convention on Human Rights (the **ECHR**) in deciding whether or not to implement the arrangements. Article 1 of the First Protocol of the ECHR provides that every natural or legal person is entitled to peaceful enjoyment of their possessions. Acquisition of property under S227, which engages S203 to allow interference with a relevant right or interest, involves interference with a person's rights under this Article. As these rights are enjoyed by corporate bodies as well as individuals all of those whose rights will be affected can claim an infringement.
32. However, the right to peaceful enjoyment of possessions in this Article is a qualified rather than absolute right, as the wording of Article 1 of Protocol 1 permits the deprivation of an individual's possessions where it is in the public interest and subject to the conditions provided for by law and by the general principles of international law.
33. There must therefore be a balancing exercise between the public interest and the individual's rights whereby any interference in the individual's rights must be necessary and proportionate. "Proportionate" in this context means that the interference must be no more than is necessary to achieve the identified legitimate aim. A "fair balance" must be struck between the rights of the individual and the rights of the public. It is for members to consider the issues raised in this report and to strike that "fair balance" in coming to its decision.
34. In the present case it is considered that the public interest in facilitating the redevelopment outweighs the rights of the individuals to peaceful enjoyment of their possessions and that the proposed use of S203 powers amounts to a proportionate interference in all the circumstances. Central to the issue of proportionality is the availability of compensation to those who are deprived of their relevant right or interest.

35. The key public benefits arising from the Development are set out at paragraph 11 above. The planning implications of the Development have been fully considered and it has been deemed acceptable with planning permission being issued on 13 September 2018.

(ix) Consultation with Affected Owners

36. The Developer has contacted all of the Affected Owners with the intention of negotiating settlements in respect of each interest in accordance with the schedule annexed at **Appendix 5**. The City wrote to all Affected Owners with injunctable interests (as shown in **Appendix 5**) that were yet to conclude agreements for settlement on 3 October 2018. The Affected Owners were advised that the City had been asked by the Developer to consider acquiring an interest in the Redevelopment Site for the planning purpose of facilitating the carrying out of the Development, so as to engage the provisions of S203. The letters also briefly explained the effect of S203 and welcomed engagement on any outstanding issues that the recipient may have. A large portion of the recipients had already engaged surveyors and reached agreements in principle with the Developer (as shown in **Appendix 5**) and as at 16 October 2018, the City had received six responses, five of which either seek clarification about previous communications or confirm that negotiations are ongoing with the Developer. One response was received from a firm of solicitors acting for one of the parties who allege infringement of rights of light. That party is not one of the five parties referred to in paragraph 23(i) above. The response states that the right holder would not seek to be overly obstructive of the scheme and would only seek appropriate compensation, and that the response should not influence the City's decision. Any dispute which remains unresolved will be evaluated before any delegated decision to acquire is made by the Town Clerk, to ensure reasonable efforts to release rights by agreement had been made by the Developer.
37. The City will again write to the same Affected Owners once this report is available online, notifying them that the report is being made with the Recommendation to engage S203 subject to the conditions.

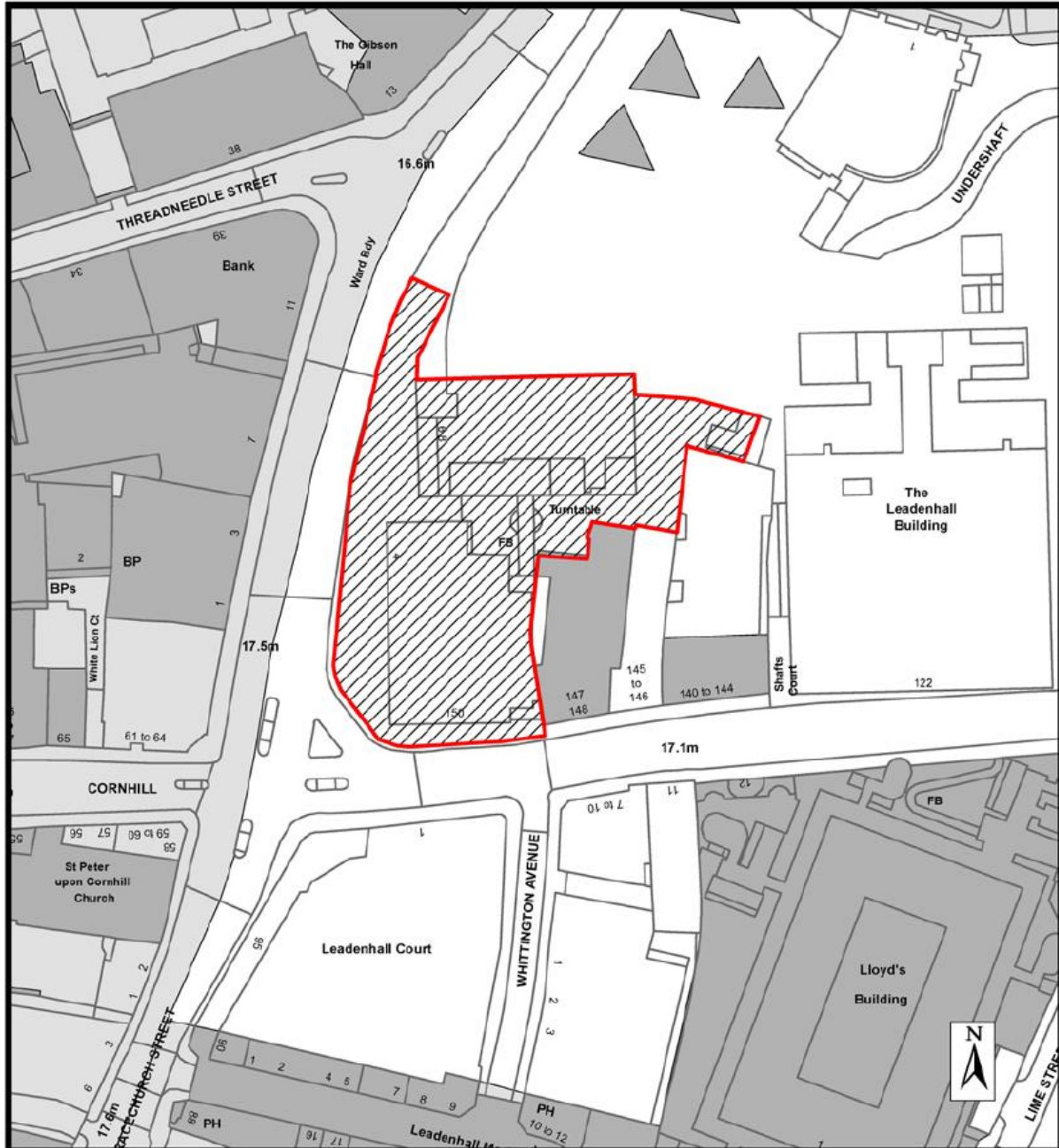
Plan Depicting the Burdened Land



APPENDIX 3

Redevelopment Site Plan

Site Location Plan



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ADDRESS:
6-8 Bishopsgate & 150 Leadenhall Street

CASE No.
17/00447/FULEIA



DEPARTMENT OF THE BUILT ENVIRONMENT

APPENDIX 4

Image of Revised Development



APPENDIX 5

Schedule of Affected Properties

6-8 Bishopsgate and 150 Leadenhall Street: Rights to Light/3rd Party Negotiation Tracker: 8th October 2018

3rd Party Rights: Negotiation Summary	Total Buildings		Total Parties		Deed Signed/No Action Open Correspondence		Terms Agreed		Offers Made		Analysis Issued/Still to Offer		No Contact		Total
Buildings with clear Actionable Injuries Identified <i>Number of Parties (Freehold and Leasehold with rights)</i>	35		44		2		19		23		0		0		44
Buildings where Injury is less/risk of being actionable <i>Number of Parties (Freehold and Leasehold with rights)</i>	34		42		7		18		15		2		0		42
	69		86		9		37		38		2		0		86
Additional Buildings analysed where no further action required	44														

Total Amount Offered to Date	£5.96 m
Total Amount Offered 15 07 18	£4.91m

Notes

Offers made/Terms agreed includes no injury agreements
Amount offered includes for 147 L St Restrictive Covenant

APPENDIX 6

Extract from the 3 October 2017 Committee report evaluating the daylight/sunlight impacts

Daylight and Sunlight

192. Loss of daylight and outlook is a material planning consideration. Policy DM10.7 of the Local Plan seeks “To resist development which would reduce noticeably the daylight and sunlight available to nearby dwellings and open spaces to levels which would be contrary to the Building Research Establishment’s guidelines”.

193. A report has been submitted analysing the effect of the proposal on daylight and sunlight to the Leatherseller’s Company overnight sleeping accommodation at 33 Great St Helen’s, which is ancillary to the livery company use.

194. The analysis has been carried out in accordance with the Building Research Establishment (BRE) guidelines “Site Layout Planning for Daylight and Sunlight”. The guidelines are advisory rather than mandatory and need to be interpreted flexibly, taking into account other factors which might also affect the site.

195. The analysis indicates that the neighbouring residential property would continue to meet the BRE criteria for Vertical Sky Component (VSC), No Skyline (NSL), Average Daylight Factor (ADF) and Annual Probable Sunlight Hours (APSH) with no noticeable loss of daylight or sunlight.

196. There are no other residential premises where daylight or sunlight would be affected by this proposal.

Amenity Space

197. The BRE guidance on sunlight to a garden or amenity area advises that for it to be adequately sunlit throughout the year no more than 40%, and preferably no more than 25%, should be in permanent shade on 21st March.

198. The amenity space around the Site that could potentially be impacted by the proposed development is the space directly in front of St Helen’s Bishopsgate Church.

199. The supporting data submitted by the applicant indicates that no part of this area would be affected by the proposal.

200. Crosby Square to the north of the proposal site has not been assessed as the 22 Bishopsgate scheme stands between the square and the proposed building.

Other Properties

201. Sunlight to the stained glass windows of St Helen’s Bishopsgate Church would not be affected by the proposed development.

Solar Glare

202. The BRE Guidelines recommend that solar glare analysis be carried out to assess the impact of glazed facades on road users in the vicinity. Viewpoints for the analysis were positioned at points before a junction or traffic lights where a distraction to motorists might occur. The viewpoint was positioned at 1.5m above ground at the height of a sitting driver and pointing down the centreline of the road where drivers’ vision is critical.

203. The environmental statement highlighted a potential significant effect on motorists and cyclists between 10:30am and 12:00pm from March to September. The glazing on the southern facade is not contiguous and would be recessed reducing the impacts, breaking up the glare and isolating the points at which it could be seen at any given moment.

204. The permitted 1 Leadenhall Street development, when constructed, would cast a shadow on the proposed development which would eliminate the reflected solar glare for road users. Should the 1 Leadenhall Street scheme or a similarly sized development on that site be constructed, there would be no need for specific mitigation measures.

205. The Applicant is considering a range of mitigation options, which would form part of further development, such as, changing the orientation of the glazed facade elements, the use of low reflective glazing or the addition of louvres.

206. Details of the mitigation of the potential solar glare, is the subject of a condition.

APPENDIX 7

Cut back drawing



APPENDIX 8

Developer's request to engage S203



HERBERT
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City of London Corporation
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EC2V 7HH

For the attention of Simon McGinn

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Our ref
2461/6771/30958296
Your ref

Date
28 August 2018

Dear Sirs

6-8 Bishopsgate and 150 Leadenhall Street - Section 203 Housing and Planning Act 2016

We act for MEC London Property 2 (General Partner) Limited as general partner of MEC London Property 2 LP (the "**Developer**"), the owner of the site located at the corner of Bishopsgate and Leadenhall Street with the address 6-8 Bishopsgate and 150 Leadenhall Street (the "**Site**"). For reference, **Appendix 1** to this letter shows the Site edged in red.

The Developer has been working towards the comprehensive redevelopment of the Site for over five years. Detailed planning permission was granted by the City on 17 December 2015 (reference: 15/00443/FULEIA) for the comprehensive redevelopment of the site; this was accompanied by a section 106 agreement of the same date. The City subsequently resolved on 3 October 2017 to grant planning permission (pursuant to application 17/00447/FULEIA) for an enlarged version of the 2015 scheme (hereinafter referred to as the "**Development**") which involves the redevelopment of the Site to provide a taller building than previously consented, subject to completion of a section 106 agreement (which is currently being finalised between the Developer and the City and which is expected to complete shortly). **Appendix 2** to this letter provides background on the scheme and commentary on market conditions.

The Development impacts on the rights of light of a number of neighbouring property interests, as is common for City redevelopment schemes. The Development would also breach a restrictive covenant which burdens part of the Site. The Developer has been seeking to agree terms with the owners of affected properties since 2014. Whilst the Developer has agreed terms with 45 of the affected parties (and is currently confident it eventually will agree terms in relation to the vast majority of the outstanding negotiations), so far agreements remain outstanding on 41 interests. Of these, 19 interests owned by seven parties are proving particularly complex and slow to resolve (further detail on this is set out below). Accordingly, for the reasons described in this letter, the Developer now considers that the inability to remove the potential injunction risks associated with the rights of light and restrictive covenant enjoyed by these seven parties to be the principal

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impediment to the delivery of the Development within the preferred construction programme. In this regard the Developer has come to the conclusion that the timely delivery of the Development will only be possible with the City's assistance in overcoming these potentially injunctable restrictive covenant and rights of light claims.

We are therefore writing to you, on behalf of the Developer, to ask if the City would be prepared to acquire an interest in the Site for the planning purpose of facilitating the Development, which would result in section 203 of the Housing and Planning Act 2016 (the "2016 Act") applying to the Development.

If section 203 were to apply to the Development, this would have the effect of overcoming potentially injunctable rights of light and the breach of the restrictive covenant.

The Development and its benefits

The detailed planning permission granted on 17 December 2015 (reference: 15/00443/FULEIA) authorised the following development of the Site:

"Demolition of existing buildings and redevelopment to provide a new building comprising lower ground and basement levels (including part basement mezzanine), ground and mezzanine levels plus part 8, part 20 and part 40 storeys plus plant [18S.lm AOD to provide office (Class 81) use [70,053 sq.m GEA, flexible shop/cafe and restaurant (Class A1/ A3) uses [418 sq.m GEA] at part ground floor and mezzanine levels and flexible shop/cafe/restaurant/office (A1/A3/B1) uses [235 sq.m GEA] at part ground floor and mezzanine levels; and a publicly accessible roof top pavilion (sui generis) [795 sq.m GEA] at level 40; the provision of hard and soft landscaping. [TOTAL 71,501 sq.m GEA]."

As referred to above, the Developer subsequently applied for planning permission (under reference: 17/00447/FULEIA) for the Development, which is similar to the consented scheme save that the Development provides a taller building. The planning application seeks consent for the following development:

"Demolition of existing buildings and the erection of a new building comprising lower ground level, three basement levels, ground floor plus part 10, 25 and 51 storeys including plant [221.2m AOD] to provide office (Class B1) use [85,892 sq.m GEA], flexible shop/cafe and restaurant (Class A1/ A3) uses [445 sq.m GEA] at part ground floor and level 1 and flexible shop/cafe/restaurant/office (A1/A3/B1) uses [199 sq.m GEA] at part ground floor and level 1; The provision of a publicly accessible roof top viewing gallery (Sui Generis) [819 sq.m GEA] at level 50 with dedicated entrance at ground floor level; the provision of hard and soft landscaping. [TOTAL 87,355 sq.m GEA]."

The City's Planning and Transportation Committee resolved to grant planning permission for the Development subject to entry into a section 106 agreement and referral to the Mayor of London pursuant to Article 5(1)(a) of the Town and Country Planning (Mayor of London) Order 2008.

This letter relates to the Development rather than the previously consented scheme. This is because the Developer intends to construct the larger building.

The existing commercial office buildings on the Site were constructed in the late 1970s, are beyond their economic life and are not viable for refurbishment. Accordingly, the existing buildings are



vacant and in the process of being demolished. The Developer intends to complete demolition in time to start construction in December 2018, with completion due in 2022.

The Site is within the City's Eastern Cluster of tall buildings and the Development supports the strategic objectives of the City of London and would support the economic policies of the London Plan, Core Strategy and Local Plan. The Development would provide:

- an iconic building designed by Wilkinson Eyre providing 85,892 sq m of new Class B1 floorspace with active frontages at ground floor level along pedestrian routes, whose sculptural design creates a prominent juxtaposition within the townscape that is considered to create a positive relationship with the new generation of contemporary office developments in the Eastern Cluster;
- flexible shop, café and restaurant uses providing 445 sq m of Class A1/A3 retail floorspace at part ground floor and level 1;
- flexible shop, café, restaurant and office uses providing 199 sq m of Class A1/A3/B1 floorspace at part ground floor and level 1; and
- a roof top pavilion comprising a publicly accessible viewing gallery and tenant meeting rooms, providing 819 sq m at level 50 with dedicated entrance at ground floor level.

These benefits of the Development are considered in turn below.

Office Component

The Development will provide 85,892 sq m of the highest quality new office accommodation of an appropriate density, size and configuration to better suit the needs of future business occupiers. This results in an additional 52,718 sq m of B1 office floorspace over the existing buildings on the Site.

The delivery of office uses on the Site is supported by planning policy. The Site falls within the City's Eastern Cluster and London's Central Activities Zone (the "CAZ"). The London Plan strongly supports the renewal of office sites within the CAZ to meet long term demand for offices and supports London's continuing function as a World City. Additional office floorspace is required in the City to deliver the scale of growth anticipated in the London Plan (35.6% between 2011 and 2036) and contribute to the maintenance of London's World City status.

The City's Core Strategy and Local Plan policies support this objective by aiming to increase the City's office floorspace by 1,150,000 sq m over the period 2011-2026 to provide an expected growth in workforce of 55,000. Further, Local Plan policy encourages the provision of large office schemes, particularly in the Eastern Cluster, identifying this area as the main focus for future office development and new tall buildings providing high quality floorspace to meet the varied needs of office occupiers and attract new investment in the City.

The Developer recently carried out a study of lease breaks and expiries for City-based companies who are likely to be interested in taking space in the Development, provided it is delivered within the currently anticipated programme. The Developer has identified 23 target parties currently in occupation of 50,000 sq ft or greater, and providing a total in excess of 3.6 million sq ft of likely demand, underlining the economic need for significant new development in this location. A delay in the development programme would mean that the project would be unable to accommodate the



space requirements generated by these events. The amount of new and refurbished stock set to be delivered in the City in 2018-19 totals c. 2.55 million sq ft, which is low when compared to the long run average take-up of c. 6 million sq ft. Supply will continue to be constrained post-Brexit. On this basis, the Developer believes that delivery of the Development in 2022, in line with the current programme, is a key strategic benefit for the City.

The Development is a rare opportunity to provide the higher levels of service and amenity that occupiers expect today. The Developer and its professional team have carried out extensive international research into the future occupier service and amenity requirements. Their research shows that 8-10 per cent of the space of future projects will be given over to occupier amenity in the shape of food and beverage, fitness, club lounges, serviced offices and auditorium/conference facilities. The current detailed design work on the Development anticipates extensive occupier amenity to cater for this demand. The Development's floorplates will range from 8,000 sq ft to 20,000 sq ft and will appeal to a broad occupier profile and a wide range of different business sectors from the City and more widely throughout Central London.

In this regard the Developer considers that, by meeting such demand for new, high quality office floorspace within the preferred construction programme, the Development would contribute to the economic well-being of the City's area.

Flexible Retail Component

The Development proposes two flexible units, comprising one unit of 445 sq m of flexible retail uses (Use Class A1/A3) at part ground floor and level 1 and a second unit of 199 sq m of flexible shop/café/restaurant/office (Use Class A1/A3/B1) at part Ground floor and level 1.

The inclusion of retail development within the application site is supported throughout the City's Local Plan, and the retail uses within the Development will respond to the City's policy aims of providing active frontages and vibrancy, as well as amenity to City workers, by complementing the nearby Leadenhall Market.

For these reasons the Developer considers that the retail provision within the Development would contribute to the economic and social well-being of the area.

Rooftop Viewing Gallery

In accordance with policy 7.7 of the London Plan and policy DM10.3 of the Local Plan, the Development includes a new publicly accessible viewing gallery, as well as tenant meeting rooms and catering facilities, within a pavilion at levels 48 to 51. The public would be able to access the viewing gallery free of charge during opening hours, with up to 50 members of the public able to be accommodated at any one time. The viewing gallery has the potential to become a very special facility for the building and the locale, both as a key amenity which will attract occupiers to the Development, and for the wider public good.

The viewing gallery would contribute significantly to the social and economic well-being of the area.

Other Public Benefits

In addition to the public benefits of the Development described above, the scheme will also provide the following public benefits, which the Developer considers would contribute to the economic, social and environmental well-being of the area:



- key sustainability and energy efficiency measures are incorporated into the Development in order to achieve an 'excellent' BREEAM rating and a significant reduction in potential carbon dioxide emissions;
- community infrastructure levy receipts in respect of the planning application for the taller building (which is subject to both the Mayoral and the City's CIL regimes); and
- a substantial package of benefits secured through the section 106 agreement, including:
 - financial contributions towards transport, affordable housing, local training and employment, carbon offsetting and security (up to approximately £1.45 million in total); and
 - provision of highway works with a value of approximately £2.5 million to widen the pavement adjacent to the new building by removing the left hand turn lane at the junction of Bishopsgate and Leadenhall Street.

Restrictive covenant

Part of the Site bears the burden of a restrictive covenant in favour of 145/146 and 147/148 Leadenhall Street. The restrictive covenant prohibits the construction of any building, wall, fence or other structure which exceeds 17.5 metres above Ordnance Datum (temporary scaffolding or plant excluded) on the land shown hatched green on the plan at **Appendix 3** to this letter (the "Burdened Land").

This restrictive covenant constitutes a constraint on the development of part of the Site. Accordingly, the Developer has been trying for more than four years to negotiate a release from the restrictive covenant, in order to be able to develop the Burdened Land without complying with its terms.

Despite the Developer's efforts to negotiate a release of the restrictive covenant, the Developer has just received a counter proposal to two offers made over the last 7 months. This offer is not acceptable to the Developer, and negotiations are continuing.

Rights of light

Waldrams have been advising the Developer on the impacts of the Development on light levels enjoyed by neighbouring properties. In May 2017, having carried out the relevant technical analysis, Waldrams began to negotiate settlements with affected owners on behalf of the Developer. Waldrams identified 86 property interests with rights of light infringements (45 of which are considered to sustain potentially actionable alterations in light) as a result of the Development. A list of these 45 property interests is provided in **Appendix 4** to this letter.

As a result of these negotiations, the Developer has successfully agreed or completed deeds of release in respect of 45 properties out of the 86 properties affected. The Developer will honour the highest offers made in each case to date.

Further details on the status of negotiations can be provided upon request.



Why the City's intervention is needed now?

While the Developer is confident about eventually being able to reach commercial agreement with a majority of the outstanding parties, as matters stand the Developer will be unable to achieve its programme for redevelopment of the Site, given the sheer number of transactions and negotiations still to be concluded.

Further, in order to provide a scheme which satisfies planning policy and market requirements and which is viable to deliver, some infringements of rights to light and the restrictive covenant are unavoidable. Impacts on rights of light enjoyed by neighbouring properties are a common feature of City developments – even modest buildings often result in infringements. Likewise, restrictive covenants often feature on titles to land and prevent redevelopment.

The following images are included within **Appendix 2**: (i) a drawing showing the envelope of the Development; and (ii) a cutback drawing showing the extent of changes to the design of the Development that would be required in order to avoid any breach of rights of light and the restrictive covenant. These changes, as demonstrated by the cutback drawing, would significantly alter the appearance of the Development and result in a substantial loss of floorspace, effectively only replacing the existing building on the Site. Such changes would render the Development unviable (and there is a real risk that planning permission would not be granted for such a proposal).

Accordingly, in the Developer's opinion the public benefits of the Development cannot be achieved without infringing these rights. There is no viable scheme which could be delivered on the Site which would meet the City's planning aspirations for the Site and also avoid the rights of light and restrictive covenant infringements; and (irrespective of viability) any such scheme would not be capable of delivering the public benefits that the Development will provide.

The Developer intends to complete demolition of the existing buildings on the site in time to start construction in December 2018 and complete the Development in 2022. The Developer's commitment to the Development is demonstrated by the fact that it has achieved full board approval to build-out the Development, subject to de-risking third party rights issues. The Developer has already been put to a total cost of approximately £42.5million. This includes securing the 2015 planning permission and promoting the 2017 planning application, securing vacant possession of the Site, making arrangements with adjoining owners in relation to other neighbourly matters and commencing the demolition of the existing buildings. In order to maintain this programme, commitment to the ground works and foundations packages totalling approximately £40-45million needs to be made in the 4th Quarter of 2018. The Developer is not able to make this commitment whilst there is a risk to this investment that the Development could be enjoined by a third party.

The injunction risks posed by the outstanding restrictive covenant and rights of light negotiations are the only remaining impediment to the Development being brought forward by the Developer. Furthermore, the Developer is not able to negotiate any pre-lets unless these injunction risks are removed and the Development can proceed to construction. For tower buildings in particular, the longer construction period means that pre-lets are unlikely to be agreed before ground works are well under way. The significant costs that would need to be committed in order to bring forward the major construction works necessary to complete the Development and bring it to the market mean that the Development cannot be brought forward until all third party rights issues are resolved.



As explained above, to date deeds of release have been secured or terms agreed for 45 property interests. The Developer considers that it has made all reasonable efforts to secure the release of the restrictive covenant and all potentially actionable rights of light, and continues to negotiate, but has come to the conclusion that the seven remaining interests referred to above (the six rights of light and the restrictive covenant) cannot all reasonably be released by agreement with the affected owners in time to enable substantive construction works to commence by December 2018.

Furthermore, in relation to the remaining 45 property interests in respect of which terms have been agreed in principle, and the additional properties in respect of which the Developer is confident terms will be agreed, whilst the Developer is prepared to honour the terms of any such agreements in principle reached with affected owners and is confident that deeds of release can be secured in time to meet the Developer's construction programme, until such formal deeds of release have been entered into there remains a risk that, for example, ownership of a property could change which would most likely frustrate progress.

The Developer will continue to negotiate with the seven outstanding parties referred to above, and, to the extent that agreement in principle is reached with any of those relevant owners prior to the City acquiring an interest in the Site, the Developer would be prepared to honour such terms.

Conclusion

For the reasons set out above, the Developer wishes the City to consider acquiring an interest in the Site, which would result in section 203 of the Housing and Planning Act 2016 applying to the Development. If section 203 were to apply to the Development, this would have the effect of overcoming the restrictive covenant and rights of light which would otherwise prevent the Development from proceeding.

For the reasons stated in this letter, the Developer considers that facilitating the delivery of the Development is in the public interest and that it satisfies the relevant statutory tests in that it would contribute to the promotion or improvement of the economic, social and/or environmental well-being of the City's area. The public benefits of the Development cannot be achieved without giving rise to infringements of the restrictive covenant and potentially injunctable rights of light. The restrictive covenant and rights of light cannot reasonably be released by agreement with affected owners (in this regard the Developer considers it has made all reasonable attempts to secure such releases); this risk of injunction is preventing the Development from being carried out and, in particular, preventing construction from being able to commence in December 2018. It is submitted that in the event that section 203 applies to the Development, thereby overcoming the restrictive covenant and rights of light, this would be proportionate given the public benefits of the Development (and taking into account that compensation would be available to those affected).

Should you require any further information please do not hesitate to contact Matthew White on 020 7466 2461 (matthew.white@hsf.com) or Alexandra Rhodes on 020 7466 2423 (alexandra.rhodes@hsf.com).

Yours faithfully

Herbert Smith Freehills LLP



HERBERT
SMITH
FREEHILLS

Encs:

On the Scale, the figure dimensions only. All dimensions to be checked on site.
All drawings to be used in accordance with the Engineering drawing, any
before any work commences.
The Contractor is to be responsible to the Architect for the accuracy of the
drawings. It is the Contractor's responsibility to ensure that the drawings are
correct and that the work is carried out in accordance with the drawings.
The Contractor is to be responsible for the accuracy of the drawings and for
the work carried out in accordance with the drawings.



Planning Application Red
Line Boundary

31 Bishopsgate Lane
EC2N 3DL
020312017 For Planning
Date Description SP AH
By Check

MEC London Property (General Partner) Ltd
and MEC London Property 2 (General Partner) Ltd

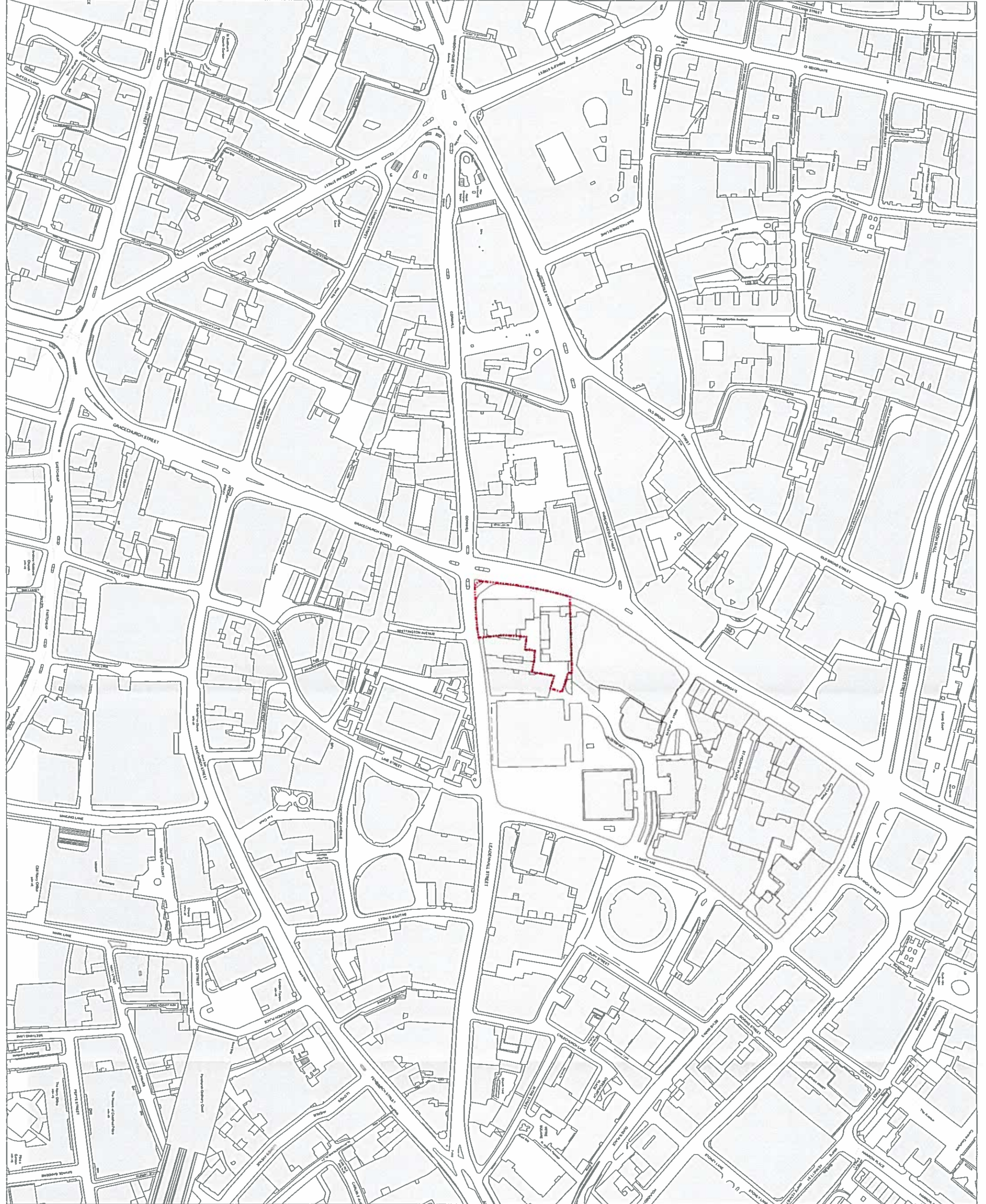
6-8 Bishopsgate and 150 Leadenhall Street

Existing Site Location Plan

Scale @ A1
1:1250

FOR PLANNING

Drawing and CAD File Number:
00997-WEA-XX-XX-PD-A-0000



6-8 BISHOPSGATE AND 150 LEADENHALL STREET, EC2**BACKGROUND NOTE TO SUPPORT REQUEST FOR S203 RESOLUTION****28th June 2018****Situation Overview:***About the Developer*

Mitsubishi Estate London ("MEL") is the London division of one of Japan's biggest quoted property companies with net assets of £12.6 billion on a consolidated basis as at 31st March 2018. They have extensive experience of development and investment in London. This is their 6th development project in the City of London. Recently, they completed the award winning 8 Finsbury Circus, EC2, which is let to two previous West End tenants (GAM and Rathbones). Other previous development projects in the City include the redevelopment of Paternoster Square.

Stanhope is acting as MEL's Development Manager. Stanhope has partnered with MEL on all their City of London projects to-date. Stanhope has 30 years' experience of development within central London. This includes 50 buildings within the City of London alone.

Project and Status

The City of London have resolved to grant MEL planning permission, subject to signing s106 (due to complete shortly), for a new iconic Wilkinson Eyre designed 50 storey office tower in the heart of the City at the corner of Bishopsgate and Leadenhall Street. The planning permission will authorise variations to the scheme design for the site which was originally granted planning permission in December 2015 (ref: 15/00443/FULEIA)

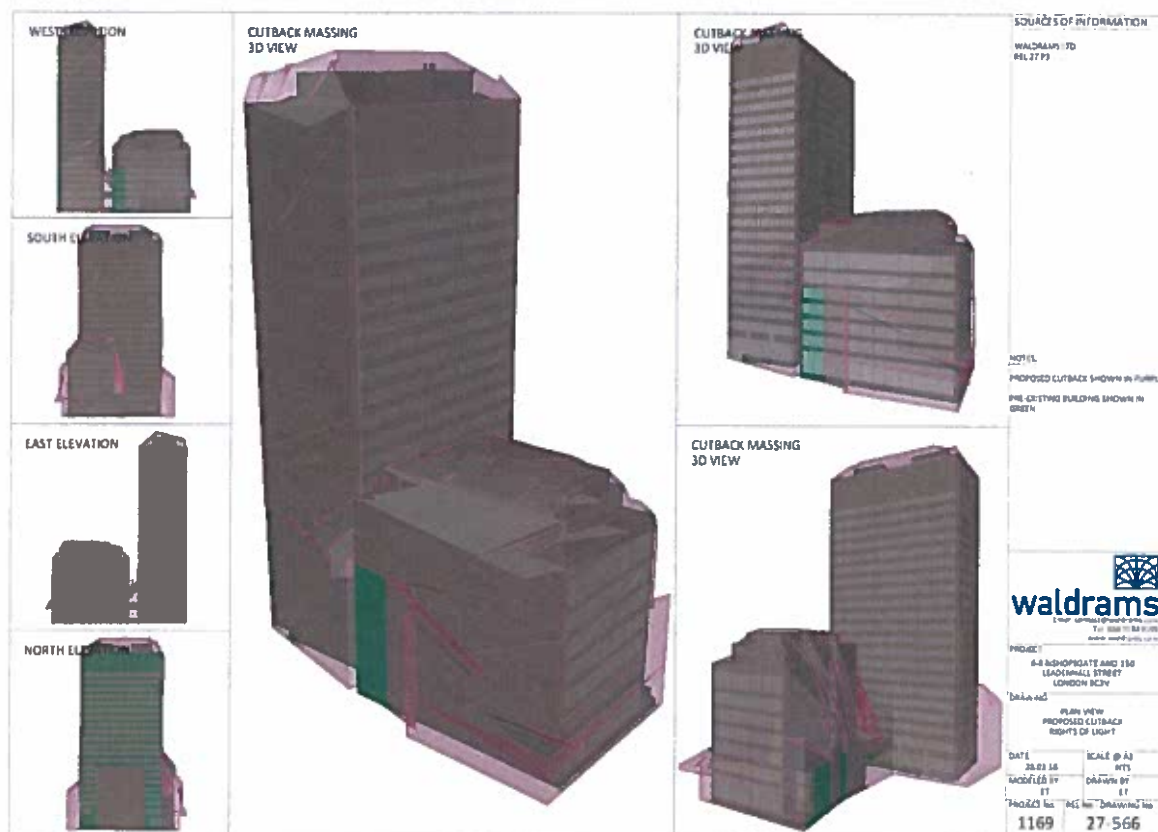
The building is set to provide 600,000 sq ft of the highest quality office accommodation with floor plates ranging from 8,000 sq ft to 20,000 sq ft and amenities which all appeal to a wide range of City and wider central London occupiers (for more details please see below). It has capacity for approximately 5,000 workers.

Detailed design is now complete and demolition is under way.

Programme

Demolition is set to continue until December 2018 with ground works to proceed immediately thereafter and practical completion targeted for Q4 2022 (see below for the context of this programme in relation to the market).

In order to maintain this programme, commitment to the ground works and foundations packages totalling approximately £35 million needs to be made in the 4th Quarter of 2018. MEL is not able to make this commitment whilst there is a risk to this investment that the scheme could be enjoined by a third party. The plan below highlights the risk from injunction, illustrating that MEL would effectively only be able to replace the existing buildings if all third party rights were respected.



Clearly this would not be a viable proposition and MEL would not proceed with such a development. Failure to overcome the third party restrictions affecting the site would instead mean that once demolition works are complete at the end of this year, the site would remain vacant and in an unsightly condition as a stalled construction project.

Mitsubishi Estates Board Approval

MEL have achieved full board approval to build-out the scheme, subject to the de-risking third party rights issues.

Third Party Rights

Overall, MEL's team have identified **86 parties** where they need to reach rights of light agreements in order to deliver the project and an additional **one** party where a restrictive covenant needs to be removed.

Approaches to affected parties were commenced 13 months ago. Of these 87 parties, terms have been agreed and/or deals signed with 40. Commercial proposals have been made to all other parties. Save in the few cases where injuries have more recently been identified, initial offers were made on outstanding injuries between 3 and 8 months ago, with subsequent higher offers made to many parties.

Whilst we are confident about eventually being able to reach commercial agreement with the vast majority of the outstanding parties, as matters stand, MEL will be unable to achieve their programme for the redevelopment of the site for the following reasons:

- i. There are circa. six parties where we remain a commercially a considerable distance apart and whereby agreement is not likely to be reached in time to meet the required development programme. This is not simply due to a disagreement about compensation. It is to do with the legal complexity and interpretation of who has the rights within a particular building and, therefore, how the compensation should be split between freeholder, leaseholder and occupier.

- ii. A number of the negotiations are with surveyors who need to take instruction from overseas investors. Responses are often significantly delayed with offers remaining unresponded to over a number of months, in large part it seems because of unfamiliarity with the legal position of rights to light in this country and the methods of calculating compensation. This is also the case for the restrictive covenant which needs to be acquired and where we have had no response to two offers over the last seven months.
- iii. The sheer volume of transactions required means that a considerable number of the negotiations are unlikely to be concluded by the time MEL need to commit to the initial works packages.

Without City support to help de-risk these 3rd party rights by resolving to use s203 if required, there will necessarily be a significant delay between demolition and start of construction, leaving a cleared site at one of the key junctions in the City.

Set out below is the market and economic rationale for MEL's intent to proceed with the development straight away following on from demolition and why they therefore are requesting the City's support on third party rights.

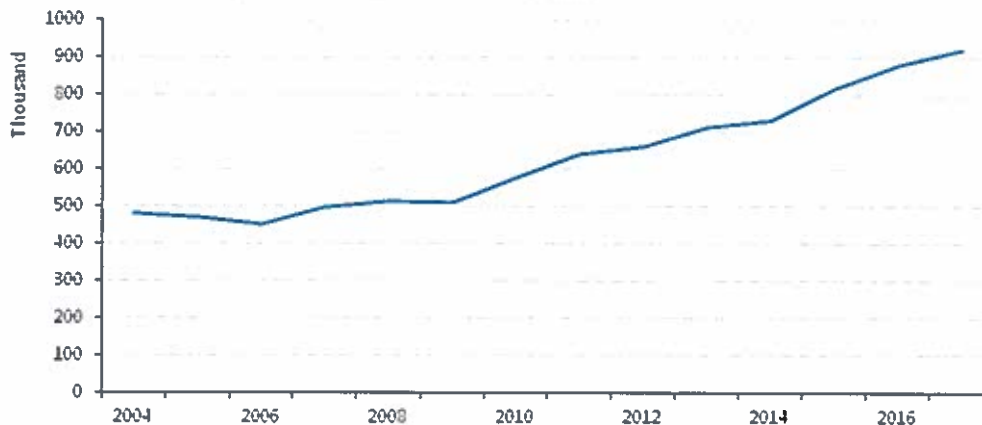
General Market Background

The Central London office market remains robust, despite the current relatively uncertain macro political and economic environment in the UK.

We are strong advocates for the future of Central London as a world-leading financial, tech, professional services and commercial centre continuing over the long-term. There are many reasons for this, not least talent pool, trusted legal system, advantageous time zone, quality of office stock, connectivity, scale and a genuinely international market.

Below is empirical evidence obtained from the national Office of Statistics as to both the total growth in City of London Employment as well as growth rates in particular business sectors.

Total City of London Employment (2004-2017)



2017 City of London Employment by Business Sector (including growth from 2009)

	2017	% share	Growth %
A: Agriculture & fishing	0	0.0	0.0
B,D,E: Energy & water	6,200	0.7	265
C: Manufacturing	22,900	2.5	141
F: Construction	76,800	8.3	210
G,I: Distribution, hotels & restaurants	87,500	9.5	201
H,J: Transport & IT, Communication	131,600	14.3	113

K-N: Banking finance & insurance etc.	417,600	45.3	38
O-Q: Public admin education & health	133,300	14.5	107
R-U: Other services	45,500	4.9	165

It is widely acknowledged that there is an emerging supply and demand imbalance, with an historically low level of supply of Grade A offices and a limited pipeline of offices under construction. This trend is due to continue for the foreseeable future, in significant part because of continuing funder caution to back new development given the macro political uncertainty.

London's major central business districts currently have a 4.8% overall vacancy rate compared to a long-term average of 5.5%. In the City, the vacancy rate is 4.7% compared to the long-run average of 6.4%. Just 0.6% of this is new-build accommodation. The trend in vacancy rates is continuing downwards with a shortage of new stock being completed.

This low supply is coupled with healthy take-up levels from occupiers across all size bands in Central London, particularly for pre-leasing prior to completion where we are experiencing very active demand, in significant part because of occupier concerns about the lack of marketable future supply. This is further reducing the available pipeline of future office development. Recent examples of this trend on scheme underway in the City include SMBC taking 200,000 sq ft at 100 Liverpool Street, EC2 Sidley Austin taking 100,000 sq ft at 70 St Mary Axe, EC3 and IDG taking 120,000 sq ft at 135 Bishopsgate, EC2.

City of London comparable high-rise schemes:

The three most recent completed tower buildings nearby to this site illustrate that there is strong tenant demand for high quality tower developments.

- **100 Bishopsgate, EC2:**
 - Being developed by Brookfield.
 - First letting achieved post demolition works commencing, during enabling works.
 - Pre-leases agreed with RBC, Jefferies, Freshfields, Equinox and Paul Hastings.
 - 85% pre-leased so far, with Practical Completion in May 2019.
 - In Heads of Terms discussions on the remainder of the building, and could be 100% pre-leased by PC.
- **The Leadenhall Building, EC3:**
 - Developed by British Land and Oxford Properties.
 - First letting achieved post demolition works being completed.
 - Initial pre-lease signed to Aon (180,000 sq ft) and Amlin (120,000 sq ft).
 - Highest rent achieved of £107.00 per sq ft to Kames Capital (existing tenant).
 - Approx. 70% leased prior to Practical Completion.
 - All now leased, approx. 6-9 months post Practical Completion.
- **20 Fenchurch Street, EC3:**
 - Developed by Land Securities and Canary Wharf Group.
 - First lettings achieved post commencement of construction works.
 - Pre-leases signed to numerous tenants including RSA, Liberty Syndicates, Jane Street Capital.
 - Highest rent achieved of £77.50 per sq ft to DBRS.
 - Approx. 93% leased prior to Practical Completion.
 - All leased within 3 months post Practical Completion.

22 Bishopsgate is the most recent tower scheme under construction, which already has significant pre-let interest (with rumours of pre-letting being agreed on approximately a third of

the building to the likes of Hiscox, Amlin, Beazley and JLL) and which isn't due for completion until end of 2019.

Pre-Leasing: Bias Towards Schemes Under Construction:

As can be seen by the analysis below, whilst there are examples of pre-lettings being achieved prior to the commencement of construction, this is difficult to achieve and is more common place on larger deals with occupiers who have specific specialist requirements (e.g. require large trading floors). For tower buildings in particular, the longer construction timeframe means that pre-lets are unlikely to occur before ground works are well underway.

It is much more common to achieve a letting during construction of a project because one of the most important factors for successfully achieving a pre-letting prior to practical completion is overall deliverability and lead-in time.

Records of Central London leasing activity for large transactions show over the past 15 years specific activity within the City as follows;

	OFF PLAN PRE-LET	PRE-LET DURING CONSTRUCTION	POST PRACTICAL COMPLETION LETTING	Total
Number of City of London lettings in excess of 100,000 sq ft				
2011-2016	5	9	6	20
2006-2016	11	19	13	43

On this basis, even for larger lettings therefore, 75% have been transacted on buildings under construction completed. Recent evidence shows us that pre-lettings (during construction) in high-rise buildings are getting smaller, as evidenced at 20 Fenchurch Street where the average deal size was approx. 60,000 sq ft, with no letting in excess of 80,000 sq ft. This is important in the context of the typical lower floor size at 6-8 Bishopsgate of only 25,000 sq ft.

The City needs a rolling supply of new stock committed in the construction phase to satisfy the market, where the majority of even large-scale lettings are only committed to developments underway. Given the anticipated slow commitment to speculative starts of developers because of the macro uncertainty and lack of availability in the pipeline (see below), MEL's board approval to build-out, subject to de-risking the third party position described above, would be a significant positive for the City.

Tenant Demand:

The design of 6-8 Bishopsgate offers a range of floor sizes that will appeal to a broad occupier profile and a wide range of different business sectors from within the City and more widely throughout Central London (for example, in respect of the recently completed Angel Court tower, 11 of the 14 new tenants are moving from outside the City).

We believe the "core" target sectors will be as follows:-

- Boutique Investment Banking
- Brokers/Traders
- Representative Banks
- US Legal and US/UK hybrids
- Management Consultancy
- Major Corporates
- Opportunity Funds
- Fund Management / Wealth Management
- Insurance Companies / Underwriters
- Fintech

- Other digital businesses
- High-value SMEs

In particular, we believe the Insurance sector will be attracted to the scheme, due to its proximity to the Lloyds Building. The dual entrance off both Bishopsgate and in particular Leadenhall Street will be a significant advantage here.

We have recently carried out a study of specific Lease Breaks and Expiries for City-based companies who are likely to be interested in taking space in this scheme provided it is delivered within the currently anticipated programme. The table identifies 23 target parties currently in occupation of 50,000 sq ft or greater and providing a total in excess of 3.6 million sq ft of likely demand, underlining the economic need for significant new development in this location. A delay in the programme would mean that the project would be unable to accommodate the space requirements generated by these events.

Shared Amenity

Increasingly, Central London occupiers are expecting high levels of service and amenity. There is particular opportunity for this with a multi-tenanted high-rise building, where scale, high value and prominence allow developers to offer these enhanced services and amenities.

This has worked successfully within other earlier generation high rise buildings in London (including the likes of Tower 42, The Gherkin, Heron Tower One Canada Square and Citypoint). However, the occupiers are now requiring a much enhanced offer than the available in these first generation London towers, as anticipated by 22 Bishopsgate. Opportunities to deliver this enhanced offer remain in short supply.

MEL and its professional team have carried out extensive international research into the future occupier service and amenity requirement. Our research shows that 8-10% of the space of future projects will be given over to occupier amenity in the shape of f&b, fitness, club lounges, serviced offices, auditorium/conference facilities. 6-8 Bishopsgate has been designed to deliver this high level of amenity to fully meet future occupiers' needs.

The very top of the building is to have a sky gallery, which will be open to the public and reserved at different times for commercial use, with some form of catering facility. This has the potential to become a very special facility for the building, both for the wider public good and as one of the key amenities which will attract occupiers to the scheme.

Development Pipeline:

We have carried out a study on the City Development Pipeline, including all proposed schemes of more than 75,000 sq ft. There are a number of observations to highlight from this analysis:

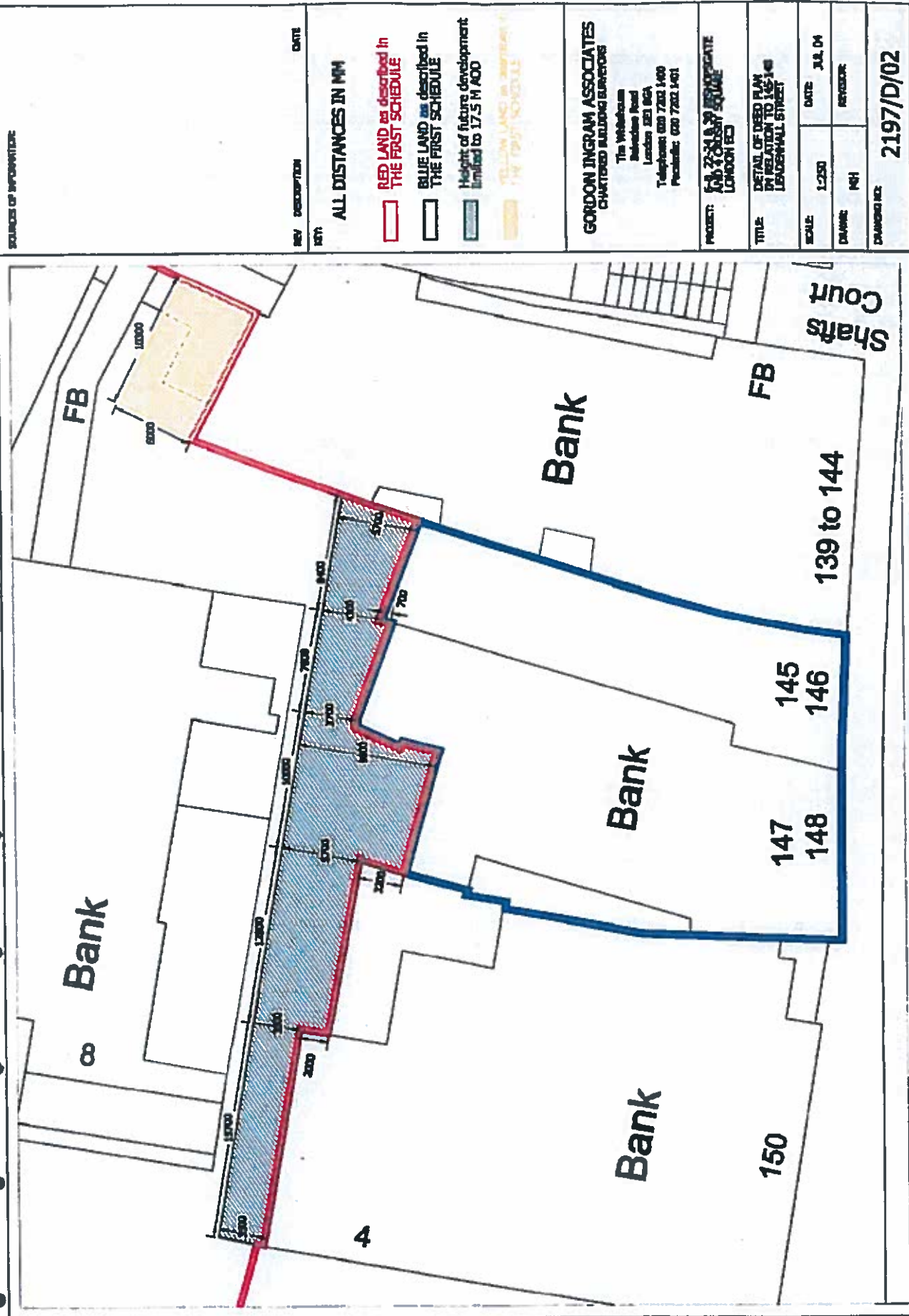
- i. The majority of the stock set to be delivered in the City during 2018 and 2019 is already pre-committed – 57%.
- ii. The amount of new and refurbished stock available over these two years totals circa. 2.55 million sq ft (or 1.27m sq ft per year), which is low compared to a long-run average take-up in the City of circa. 6 million per sq ft.
- iii. Post the EU referendum, several schemes have been delayed or are under review. As a result future supply will be further constrained. For example, in January 2017 supply forecast to be completing in 2022 totalled c 4.50 million square feet. Looking at the same analysis of June 2018, such forecast supply now only totals 3.0 million square feet (i.e. a reduction of a third) and this is expected to reduce further as developers continue to delay starting on-site.
- iv. Over 50% of supply for the years 2020 and 2021 will be refurbished second hand stock. It is therefore important that new high quality development stock capable of being constructed during this period is permitted to do so.

Summary and Key Conclusions:

- i. Despite the macro political and economic uncertainties, tenant demand across London remains resilient underpinned by London's many advantages as a global Gateway City;
- ii. Current vacancy rates are already below the long-term averages and are continuing to fall;
- iii. There is shortage of unlet new and refurbished stock being delivered in the next two years, which will likely further reduce available stock, particularly given the currently active pre-let market;
- iv. Some proposed development projects are likely to face ongoing delays as investors continue to postpone decisions, pending clarification of the current macro political and economic uncertainties;
- v. Leasing evidence from recent tower schemes show their popularity with occupiers and this is set to continue with the next generation, including 6-8 Bishopsgate, as they provide increasing amenity for occupiers.

Based on the points highlighted in this note, we believe that the development of 6-8 Bishopsgate within the target programme set-out earlier (i.e. starting ground work in the 4th quarter of 2018 to deliver to 2022), is a key strategic benefit for the City. In a market where vacancy rates are already low and the development pipeline is likely to be constrained, particularly for new-build developments, 6-8 Bishopsgate will deliver a significant supply of the highest quality of accommodation with the amenity that occupiers increasingly require.

Overcoming third party rights within the next three to four months is therefore essential to enable the development to proceed, the public benefits of the development to be realised and for the new building to be completed in time to meet the identified tenant demand for new high specification office floor space in the City. Based on the status of negotiations with third party beneficiaries as described above, we have concluded that the use of the City's section 203 powers will be necessary to achieve this.

Shafis
Count

PLAN

150 Leadenhall Street and 6/8 Bishopsgate, EC2

Proposed Redevelopment

Identified Properties with Actionable Rights to Light or Restrictive Covenant Positions

No.	Address	Tenure
1	1 Lime Street	Freehold
2	1 Lime Street	Leasehold
3	1 Whittington Avenue	Freehold
4	100 Bishopsgate	Freehold
5	11 Leadenhall Street	Freehold
6	111 Old Broad Street	Freehold
7	120 Old Broad Street	Freehold
8	122 Leadenhall Street	Freehold
9	1-3 Bishopsgate	Freehold
10	13/14 Cullum Street	Freehold
11	147 Leadenhall Street	Freehold
12	15 Bishopsgate	Freehold
13	17 St Helens Place	Freehold
14	19 Old Broad Street	Freehold
15	2 Finch Lane	Freehold
16	2 White Lion Court	Freehold
17	20 Old Broad Street	Freehold
18	25 Old Broad Street	Freehold
19	25-29 St Mary Axe	Freehold
20	28/29 Threadneedle Street	Freehold
21	3 St Helens Place	Freehold
22	31-33 Lime Street	Freehold
23	32 Threadneedle Street	Freehold
24	33 Grt St Helens	Freehold
25	34 Threadneedle Street	Freehold
26	38 Threadneedle Street	Freehold
27	39 Threadneedle Street	Freehold
28	39 Threadneedle Street	Leasehold
29	41 Threadneedle Street	Freehold
30	5/6 Threadneedle Street	Freehold
31	55 Old Broad Street	Freehold
32	5-7 St Helens Place	Freehold
33	62 Cornhill	Freehold
34	63 St Mary Axe	Freehold
35	63 St Mary Axe	Leasehold
36	68-73 Cornhill	Freehold
37	7 Finch Lane	Freehold
38	7-10 Leadenhall Street	Freehold
39	7-11 Bishopsgate	Freehold
40	7-11 Bishopsgate	Leasehold
41	Gibson Hall	Freehold
42	Leadenhall Court	Freehold
43	Leadenhall Market	Freehold
44	Merchant Taylors' Hall	Freehold
45	St Helens Bishopsgate	Freehold