

APPENDIX 1

Statutory Conditions

1. The statutory conditions which must be fulfilled in order for S203 to be engaged are set out and considered below:
 - a. *The land has become vested in or acquired by a specified authority or appropriated by a local authority for a planning purpose on or after 13 July 2016 (or the land is “other qualifying land”).* Under the recommended arrangements the City is a specified authority which will acquire the LBI land after 13th July 2016, and the City land will be appropriated for planning purposes.
 - b. *There is a planning permission for the building/use.* Permissions were issued by LBI and the City on 19 July 2018.
 - c. *The specified authority could acquire the land compulsorily for the purpose of the building/use.* S.530 Education Act 1996 empowers the Secretary of State to authorise a local authority to acquire land compulsorily for the purpose of an Academy, S.17(3) Housing Act 1980 empowers a local authority to acquire land compulsorily for housing purposes if authorised by the SoS.
 - d. *The building/use is for purposes related to the purpose for which the land was acquired/appropriated.* The City intends to redevelop the Site in order to provide a school and social housing in accordance with the purposes of acquisition and appropriation set out in the body of the report.

The statutory conditions are considered to be fulfilled.

Relevant Criteria and Evaluation

2. In agreeing for the City to consider acquisitions/appropriations for planning purposes on a case by case basis, Court of Common Council referred to an expectation that adequate attempts to remove injunction risk by negotiation would first be made, and consideration to be given to whether rights holders are prepared to release rights on reasonable terms and within a reasonable time. These matters are considered in paragraphs 13 and 14 below.
3. Before making a decision to acquire the LBI Land and appropriate the City Land as proposed consideration should be given to the issues identified at below and the City must be satisfied that there is a compelling case in the public interest that the powers conferred by S203 be engaged 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 of some of the infringements – and 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 release of rights by negotiation cannot reasonably be achieved;
- (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 so as to outweigh the infringement of human rights;

Each of these considerations is dealt with using the same enumeration below.

(i) Planning permission

- 4. Planning permission was granted for the Development on 19 July 2018.

(ii) Facilitation of the Revised Development by use of S203

- 5. The school site is required to accommodate the City of London Primary Academy (COLPAI) from July 2020. The school has been established and currently occupies temporary accommodation at Moreland School until July 2020. A years' extension from July 2019 was obtained on the strict basis that it could not be further extended as the area is required by the host school. There is unlikely to be any other suitable temporary accommodation available after 2020, and ongoing uncertainty about the delivery programme would cause significant disquiet to pupils, parents and staff, prejudicing the successful progress of the school.

(iii) Revised Development in the public interest

- 6. The school will provide high quality primary places for families in the City, as well as in LBI. There is increasing potential demand for school places from families within the City, and, contrary to central and regional government policy, choice is currently limited as the only state funded primary school, Sir John Cass, is not in the vicinity, is a Church of England School, and places are largely taken by families living outside the City. All other schools in the City are in the independent sector.
- 7. The social housing will provide accommodation for people on both the City's and Islington's housing waiting lists who are in housing need and will result in a quantitative housing gain. Central and regional government policy recognises the urgent need for additional affordable housing. By facilitating the provision of a school and social housing, the acquisition and appropriation of land is likely to contribute to the achievement of the promotion or improvement of the economic, social and environmental well-being of the City's and the London Borough of Islington's area.;
- 8. The Scheme promotes the following key London Plan policies:

8.1 Policy 3.3 - Ensure the housing need identified in the London Plan is met, particularly through provision consistent with at least an annual average of 32,210 net additional homes across London which would enhance the environment, improve housing choice and affordability and provide better quality accommodation for Londoners.

8.2 Policy 3.11 - Maximise affordable housing provision and seek an average of at least 13,200 more affordable homes per year in London over the term of the London Plan.

9. The Scheme promotes the following key Local Plan policy:

CS22 - maximise opportunities for the City's residential and working communities to access suitable health, social and educational facilities and opportunities, while fostering cohesive communities and healthy lifestyles.

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

10. During the evolution of the Scheme consideration was given to alternative configurations aimed at minimising interference with neighbours' light. This included co-locating the school and housing together but this would have resulted in worsened impacts to the College of Fashion and would have unacceptably extended the timetable for completion of the school. The proposed residential tower was reduced, removing 6 social housing units, in order to reduce impacts on daylight and sunlight and Rights of Light. In order to achieve any further significant reduction it would have been necessary to remove 8 storeys, substantially reducing the number of social housing units. The developer did not consider this to meet policy aspirations regarding best use of land and increasing social housing.

11. The impacts in planning terms, of the issues of daylight, sunlight and overshadowing were considered by both local planning authorities when they resolved to grant planning permission. Both local planning authorities acknowledged that there was significant harm but concluded that overall, the benefits outweighed the harm and justified the grant of planning permission.

(v) Rights of light cannot reasonably be released by agreement

12. In cases where the acquisition is transacted solely to engage S203, consideration should be given to whether it is necessary, or whether agreements to permit infringement can be reached with owners of affected properties with rights of light on reasonable terms and within reasonable timeframes. In this case, the acquisition is necessary in order to assemble the site on which the development is proposed and ensure it is appropriately held under relevant powers. Nevertheless, an evaluation of whether agreements could be reached is considered below.

13. It was considered premature to approach rights holders about terms for the release of their Rights of Light while numerous pre-requisites for the development to proceed were outstanding. A condition for the LBI Land to be transferred to the City is that the City covenant to construct the school. The City was not in a position to give this covenant until the required ESFA funding for the school's construction was available. In late September an informal indication that the required funding would be provided was received and at the time of writing this report a written funding offer is awaited. On receipt, all key pre-requisites for the project will be in place. Given the resources required to progress Rights of Light negotiations (for both the developer and the rights holders), and the expectations raised once negotiations commence, it was not considered fair or prudent to initiate the negotiations pending confirmation of ESFA funding. As soon as practicable following confirmation, rights holders will be proactively approached to commence negotiations and conclude them as soon as possible. However, given the programme to ensure the school is ready for Summer 2020, it is not considered that there is a realistic prospect that agreements will be reached and binding

deeds of release entered into with all affected owners in time to enable the Scheme to proceed to programme. Reliance on the provisions of S203 is therefore necessary in the public interest to enable the scheme to proceed in advance of all agreements being completed.

14. However, assurance that fair offers will be made to rights holders for the release of their rights is provided by Recommendation 5 which instructs the Rights of Light advisers to proactively approach affected rights holders and offer fair and reasonable compensation sums on a normal property rights basis based on a non-profit making local authority scheme. In addition, rights holders will be advised that should they seek their own professional advice, the reasonable fees of their advisers will also be reimbursed. Based on the circumstances set out above and in paragraph 13, a departure from the general approach adopted by Court of Common Council regarding prior negotiations (see paragraph 2 above) is considered justified.
15. Insofar as acquisitions/appropriations for planning purposes are concerned, Court of Common Council, on 8 December 2016, in agreeing cases would be considered on a case by case basis and delegating determination to Planning and Transportation Committee, confirmed that *"Wherever feasible and appropriate the developer will be expected to demonstrate that rights holders have been appropriately advised of the proposed resolution, made aware of any report, and provided with a contact at the City to whom they can direct comments"*. Although this is not a case of an acquisition being transacted solely to engage S203, rights holders have been advised of this report and provided with a contact to whom they can direct comments. Any relevant comments received will be reported to the committee.

(vi) The Scheme is prejudiced due to risk of injunction

16. For the reasons set out at paragraphs 4 to 14 above, delivery of the Scheme in accordance with the agreed programme stands to be prejudiced by the risk of injunction while it remains open to an affected rights holder to prevent infringement.

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

17. The advice given in the DCLG Guidance on compulsory purchase 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 engage S203. Given that it is in the public interest that the Scheme should proceed (as discussed in paragraphs 4 to 10 above), and the prejudice to the Scheme whilst the prospect of an injunction to restrain interference with rights to light remains, there is a compelling case in the public interest that the acquisition and appropriation proceed in a way which ensures the provisions of S203 are engaged.
18. 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

19. Human Rights issues arise in respect of the proposed arrangements. An acquiring authority should be sure that the purposes of the Scheme 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 in a way which engages S203 to allow interference with rights of

light, 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.

20. 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. In cases such as this, where rights to light are enjoyed by residential properties Article 8 is also engaged (the right to respect for private and family life and a person's home). Article 8(2) allows for interference which is "in accordance with the law and is necessary in a democratic society in the interests of national security, public safety or the economic well-being of the country, for the protection of health and morals, or for the protection of the rights and freedoms of others".
21. 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.
22. In the present case it is considered that the public interest in facilitating the Scheme outweighs the rights of the individuals to peaceful enjoyment of their possessions and their right for private and family life and home and that the proposed use of S203 powers amounts to a proportionate interference in all the circumstances.
23. Central to the issue of proportionality is the extent of infringements and availability of compensation to those who are deprived of their Rights of Light. The extent of infringements is indicated in the list of affected properties at Appendix 1A.
24. The key public benefits arising from the Revised Development are set out at paragraphs 4 to 10 above. The planning implications of the Scheme have been fully considered and it has been deemed acceptable with planning permission being granted in July 2018.

Appendix 1A

List of Affected Properties

Actionable Injuries Caused by Proposed Development on Land Owned by the London Borough of Islington (LBI) – See drawings ROL_12_004 & 005

Invicta House (Commercial)

The development on the LBI land would cause actionable injuries at basement, ground and first floor level.

Banner House (Residential)

No actionable injury.

Basterfield House (Residential)

The development on the LBI land causes actionable injuries to 17 flats. To 13 of these flats the injury occurs to the bathroom, in 2 the injury occurs to the kitchen and in 2 flats there are injuries in the kitchen and bathroom.

Golden Lane Community Centre

No actionable injuries.

Hatfield House (Commercial)

There are actionable injuries to kitchens to 2 flats.

Cision House (Commercial)

Actionable injuries would occur to 6 office areas.

14 Baltic Street (Commercial)

No actionable injuries.

12 Baltic Street (Residential)

Actionable injury at ground floor level.

10 Baltic Street East (Commercial)

No actionable injuries.

London College of Fashion (including School House)

Actionable injury to one room at ground and first floor level to School House. 6 rooms with actionable injuries to the main building, but none to areas believed to be classrooms.

London House (Commercial)

Actionable injury to basement and to office areas at first, second and third floor level.

Additional actionable injuries introduced by proposed development on City of London land (see drawings numbered ROL7520_13_004 & 005)

Invicta House (Commercial)

Very small additional area of loss to 1 room at ground floor level.

Banner House (Residential)

Actionable injury to bedroom of 1 flat.

Basterfield House (Residential)

Additional actionable injury to kitchen of one flat which has an actionably injured bathroom due to the development on LBI land.

There are no additional actionable injuries to the remainder of the properties listed above.