

Committee(s):	Date(s):	Item no.
Planning and Transportation Committee Policy and Resources Committee	23 rd September 2014 2 nd October 2014	
Subject: Redevelopment of Fleet Building & Plumtree Court - Potential Acquisition of Land for Planning Purposes	Public	
Report of: Chief Planning Officer and Comptroller and City Solicitor	For Decision	
Ward (if appropriate): Farringdon Within		
<p><u>Summary</u></p> <p>This report seeks your approval for the potential acquisition of land for planning purposes by agreement under section 227 (“S227”) of the Town & Country Planning Act 1990 (“TCPA”) enabling the operation of powers under Section 237 of the Town & Country Planning Act 1990 (“S237”) to facilitate the carrying out of the redevelopment of Fleet Buildings & Plumtree Court, 40 & 42 Shoe Lane, 12 Plumtree Court and 57 Farringdon Street London EC4 (the “Redevelopment Site”)</p> <p>The City Corporation granted planning permission for a scheme for the Redevelopment Site on 28 October 2013 under planning reference 12/01225/FULEIA (“the Development”). Demolition is under way under a planning permission for demolition and will enable the letting of construction contracts. The Development would provide a substantial increase in floor space in a building capable of meeting the needs of a variety of City-based businesses from a substantial bank to a multi-let building for a range of smaller occupiers.</p> <p>However, the Developer has stated that redevelopment is at risk due to injunctable Rights of Light which cannot be released on the basis of reasonable compensation. The Developer has asked if the City Corporation would be prepared to consider intervening by utilising the powers under S227 to enable reliance on the powers in S237 to over-ride Rights of Light, due to injunctable Rights of Light enjoyed by 2 neighbouring owners, where terms for the release of the rights have not been settled. Of 14 affected properties, releases have been agreed with 11 of them. For the City Corporation to intervene it would be necessary for it to acquire an interest in the Redevelopment Site. It is considered appropriate for the City carefully to consider such requests where the Rights of Light cannot be released on the basis of reasonable compensation.</p> <p>The City has obtained its own advice as to reasonable compensation figures, which are considered to be £1.2M for both neighbouring owners with outstanding Rights of Light. This is higher than the sums offered by the Developer but less than the sums sought by the 2 neighbouring owners. The City Corporation has sought to mediate between the parties and has asked all three if they would be prepared to settle at the £1.2M figure. The Developer has confirmed that it will. The 2 adjoining owners with</p>		

the Rights of Light claims have not indicated that they would but have invited the Developer to negotiate further. It is considered that the Developer has acted reasonably in agreeing to settle at the sum proposed by the City, and that failure of the two adjoining owners to indicate that they are prepared to settle at the £1.2m figure (each), is likely to prevent the Development (or some similar development) from being carried out.

Recommendation

It is recommended that (subject to the prior completion of an Indemnity Agreement between the City and the Developer indemnifying the City's compensation liabilities and costs, identifying agreed steps to be taken to progress carrying out of the development, and undertaking to pay identified compensation to affected owners) Members agree to approve the following:

- a. Acquisition of an interest in the Redevelopment Site by the City Corporation under section 227 of the Town and Country Planning Act 1990 for the planning purpose of facilitating the carrying out of the Development (in its current form or as it may be varied or amended) and subsequent disposal of that interest to the Owners (or an associated company) under section 233 of the Town and Country Planning Act 1990;
- b. The terms of the Indemnity Agreement, the acquisition and the disposal referred to above to be delegated to the Town Clerk in consultation with the Chairmen and Deputy Chairmen of Planning and Transportation and Policy and Resources Committee.

Main Report

Background

- 1 The City Corporation resolved to grant planning permission for the redevelopment of Fleet Buildings & Plumtree Court, 40 & 42 Shoe Lane, 12 Plumtree Court and 57 Farringdon Street London EC4 (the "Redevelopment Site") on 28 October 2013. The development was supported by the Mayor. Planning permission was granted for construction of a new office building comprising ground, upper ground and upper ground mezzanine plus 8 storeys with associated basement and basement mezzanine, and hard and soft landscaping (including works to the public highway) (113817sq.m).
- 2 As set out in the City Planning Officer's report to the Planning and Transportation Committee of 22 March 2013 ("the Planning Report"), the proposal 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 Corporation to promote the City as the World's leading international financial and business centre. The scheme would provide a development that would provide an increase in high quality and flexible floor space. It could accommodate the needs of a variety of tenants from a substantial bank to a multi-let building. It is currently proposed that it would be occupied by a substantial bank.

- 3 In relation to the public realm improvements, it is noted that the Development will involve amenity proposals in the adjoining area that would enhance the street scene and character of the area.
- 4 The buildings formerly on the Redevelopment Site are in the process of being demolished under a planning permission for demolition and the owner advises that demolition which is substantially advanced will enable the letting of construction contracts.

Proposal

- 5 The City Corporation has been approached by the Developer to seek assistance in overcoming potential injunctable rights of light issues that would adversely impact on the achievement of the Development.
- 6 A right of light is an interest in land (i.e. an easement) which entitles a neighbouring landowner to enjoy light across an affected adjoining site. Any development which interferes with that right could constitute a breach of the easement that would entitle the neighbouring owner to claim an injunction preventing development or compensation for the effect of the light lost as a result of the interference.
- 7 The way in which the injunction risk can be overcome is by using a mechanism contained in S237, the operation of which is described in the Legal Implications section of this report.
- 8 The Developer has asked if the City Corporation would be prepared to consider acquiring an interest in the Redevelopment Site for the planning purpose of facilitating the carrying out of the Development, if necessary, to enable the operation of S237. Such interest would be effectively transferred back to the Developer who would be able to proceed with redevelopment.

Considerations

- 9 In making a decision as to whether to acquire an interest in the land for the planning purpose of the Development, the following matters are among the relevant considerations that should be taken into account by the City Corporation:-
 - i) The existing Rights of Light affected and the likely extent of interference with Rights of Light;
 - ii) Whether interference with the Rights of Light is necessary in order to allow the Development to be carried out and whether agreement can be reached for release of those rights, and if so, on what terms and in what timescale;
 - iii) Whether acquisition will facilitate the carrying out of the Development;
 - iv) Whether the Development will contribute to one or more of the following objectives and thus be in the public interest:
 - a) The promotion or improvement of the economic well-being of the area;

- b) The promotion or improvement of the social well-being of that area;
 - c) The promotion or improvement of the environmental well-being of the area;
 - v) Whether the benefits of the Development could be achieved without giving rise to all or some of the infringements.
 - vi) Whether the public benefits arising from the recommendations are proportionate to the infringements, and in particular to any interference with rights guaranteed by the European Convention on Human Rights (“Convention Rights”).
10. Members should take into account all relevant considerations including comments in communications between the City Corporation and the neighbouring owners, the Developer’s request for the City Corporation to intervene dated 11 March 2014, and the Planning Report. These issues are considered in turn below.

11. The existing Rights of Light affected and the likely extent of Infringements

- 11.1 In terms of the history of negotiations with persons whose rights of light are infringed by the Development, the Developer has advised the City Corporation that they instructed specialist rights of light surveyors to analyse the impact of the proposed redevelopment on the adjoining properties and have had advice in relation to the likely levels of damage to those properties. Based on that advice there are 14 affected properties (see List of properties attached at Appendix 3 to this Report). This is made up of 12 commercial and 2 residential properties. Agreement has been reached in respect of 11 of the properties as set out further below, including both residential properties.
- 11.2 As regards the impacts in planning terms, issues of daylight sunlight and overshadowing were fully considered when the committee resolved to approve the consented scheme in March 2013 and the impacts were not considered to be unreasonable, and were therefore acceptable.

12. Whether interference with the Rights of Light is necessary in order to allow the Development to be carried out and whether agreement can be reached for release of those rights on what terms and in what timescale

- 12.1 The Developer has advised that it is not possible to make small alterations to the size or shape of the Development and have any meaningful impact on the rights of light position.
- 12.2 In this regard, the cutback drawing at Appendix 4(a) prepared by the Developer shows the extent of the changes that will be needed to prevent infringement on all properties with potential injunctable rights (including those which have been settled and released). Appendix 4(b) shows the changes that would be needed to prevent the 2 infringements where the rights have not been settled and released due to differences as to compensation. Appendix 4(c) shows those changes, plus changes that would be needed to prevent infringements to Rights of Light enjoyed by

Stonecutter Court where there is a different outstanding issue (explained at paragraph 12.10 below). The cutbacks, as standalone adjustments to the built form, would not be acceptable in design terms and design adjustments would be required to provide a building of acceptable appearance. It is considered that such substantial design change would alter the appearance of the Development significantly and result in a substantial loss in floor space. The Developer asserts that such a reduced building would not be delivered as it would not provide for the accommodation requirements of a large occupier such as the Developer. It is stated by the 2 neighbouring owners with outstanding rights (who object to the use of the City Corporation's powers as proposed) that a cut back scheme could deliver a viable and highly profitable development which would retain sufficient capacity in the building to accommodate present and future needs of a major occupier such as the Developer. This is considered unlikely. In any event, even if that were the case, it would be regarded as a lost opportunity to optimise employment generating floor space in one of the most highly accessible locations in the City and in an area where there are acknowledged supply constraints. In deciding whether it is necessary to acquire an interest in land under S227 so as to rely on S237 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 of light on reasonable terms and within reasonable timeframes.

- 12.3 The history of the Developer's negotiations with persons whose rights of lights are infringed by the Development is that the Developer instructed specialist rights of light surveyors, Gordon Ingram Associates ("GIA"), in 2011 to analyse the impact of the Proposed Development on adjoining properties and received their advice in relation to the likely levels of damages to those properties. Based on that advice, they have successfully agreed settlements with the majority of potential claimants over the last 2½ years (11 of the 14 affected properties) and now have binding deeds of release in those cases based on compensation calculated by reference to loss of amenity as opposed to profit share.
- 12.4 However, in respect of two affected owners, who have a potential injunctable position, no agreement has been reached due to differences as to compensation. The 2 affected owners have written to the City Surveyor and Comptroller & City Solicitor. They express the view (and have obtained Leading Counsel's Opinion), that it is premature for the City to consider recourse to S237 because the Developer has not made genuine attempts to engage meaningfully in seeking to agree adequate compensation. Further they state that they have no wish to frustrate the Development and that their expectations of compensation are reasonable. These expectations are that the compensation will have regard to the notional profit which the release of their rights would give to the Developer. The Developer asserts that compensation based on loss of amenity to which an appropriate multiplier is applied in lieu of notional profit share is a fair and equitable approach to negotiations, and that it has acted reasonably in declining to settle on the basis of notional profit share. The Developer further asserts that the reasonableness of its approach is demonstrated by the fact that it has agreed terms with the vast majority of affected owners on the same basis as the offers it has made to the 2 neighbouring owners and that this is the traditional approach used extensively in developments around the City.

- 12.5 The City's independent Valuation and Rights of Light advisers have reviewed the position and advised that reasonable offers to the 2 neighbouring owners would be around £1.2M each. The City has sought to mediate and has enquired of the 2 neighbouring owners whether they would accept offers of £1.2M if such offers were made by the Developer, but they have not indicated that they would and have invited further negotiations. The Developer has indicated that it would be prepared to offer £1.2M in order to resolve the position (assuming the figure was accepted by both counterparties), although it considers the figure materially in excess of its own calculation of reasonable compensation.
- 12.6 The City's Rights of Light adviser has reported that, in common with other similar situations in the City, it is extremely difficult to determine the development gain attributable to the interference with Rights of Light to the 2 neighbouring properties. This is because the cutbacks to the development required to avoid such interference overlap to a large degree with cutbacks which would be required to avoid interferences with Rights of Light enjoyed by other properties. As a consequence, a profit share sum based upon these individual cutbacks would include an element of unfair double counting. The only way around this problem is to try to apportion the cutback between the properties involved.
- 12.7 However, agreeing a fair and reasonable apportionment on this basis can be difficult. As a consequence, agreeing cutbacks suitable for a fair profit share appraisal can be difficult. The Comptroller and City Solicitor has advised that damages for rights of light infringements in injunctable cases should provide for (i) compensation for diminution in value to the neighbouring owner; and (ii) equitable damages (in substitution for an injunction). There is disagreement between the parties as to how the uplift in (ii) should be calculated in this case, but in the circumstances of this case, and given the difficulties referred to above, officers, guided by relevant experts, are satisfied that (although ultimately a matter for a court to determine) it is appropriate to calculate the uplift by applying an appropriate multiplier, and that the resulting figure of £1.2M is reasonable and is arrived at by applying the criteria established by the courts including the "what feels right" criteria established by case law. (Ultimately, if S237 were engaged, the level of compensation would be a matter for the Lands Chamber to determine if the parties could not agree a negotiated figure).
- 12.8 Based on advice from relevant legal, economic development and surveyor officers and Leading Counsel, officers are of the view that the Developer has acted reasonably in agreeing to pay compensation of £1.2M for the reason set out in paragraph 12.6.
- 12.9 The neighbouring owners have rejected the above approach to the relevance of development profit, and maintain that the compensation should have regard to the share of profit attributable to the offending part of the Development.
- 12.10 As indicated, settlements have been reached with 11 out of 14 affected properties. Aside from the 2 neighbouring owners referred to there is a third owner of property at Stonecutter Court, where the question of whether it has injunctable rights depends on the interpretation of an existing rights of light deed which contains a release to an agreed profile. The Developer, having taken advice from Leading Counsel, asserts that the small extent to which the current scheme exceeds the

released profile does not give rise to an injunctable position. The validity of the existing deed is disputed by the leaseholder who has also taken Leading Counsel's advice. The Developer has given assurance that, if Committee agrees to engage S237, it will nevertheless pay compensation in respect of the Rights of Light infringement to the leaseholder as if S237 was not engaged (not only if the Deed is found to be valid, but also if it is found to be invalid). A covenant to this effect will be secured in the Indemnity prior to any acquisition under S227 proceeding. The leaseholder of Stonecutter Court would not therefore be prejudiced if the Resolution is agreed.

13 Whether acquisition will facilitate the carrying out of the development

- 13.1 The Developer has already been granted planning consent for the proposed Development and entered into associated Section 106 and 278 Agreements. It has also made significant progress in demolishing both Fleet Buildings and Plumtree Court. In addition to finalising core and shell design, the Developer has engaged lead architects on the proposed Interiors and has materially advanced Interiors design in order to enable commencement of permanent works as early as 2015 and full building completion by 2020.
- 13.2 Given the indication from the 2 neighbouring owners that a different methodology ought to be adopted for calculating compensation (namely taking account of the development profit attributable to the part of the Development giving rise to the infringement, which methodology is not considered reasonable in the particular circumstances of this case), it does not appear that the Development can proceed without the engagement of S237, and it is considered this will facilitate the carrying out of the Development.

14 Whether the Development will contribute to one or more of the following and thus be in the public interest: (i)The promotion or improvement of the economic well-being of the area; (ii)The promotion or improvement of the social well-being of the areas; (iii) The promotion or improvement of the environmental well-being of the area.

- 14.1 The consented scheme provides an employment led development that would provide an increase in high quality floorspace. It would provide public realm improvements. The Development is considered to be in substantial compliance with policies that relate to it, and in particular, supports the strategic objective of the City Corporation to promote the City as the World's leading international financial and business centre. Relevant planning policies include those outlined in turn below.
- 14.2 The London Plan includes the following policies:
- 14.2.1 Policy 2.10 Central Activities Zone – Strategic Priorities sets out the following strategic priorities for the CAZ:
- (a) Enhance and promote the unique international, national and London-wide roles of the CAZ, supporting the distinct offer of the Zone based on a rich mix of local as well as strategic uses and forming the globally iconic core of one of the world's most attractive and competitive business locations.

- (b) In appropriate quarters bring forward development capacity and supporting infrastructure and services to sustain and enhance the CAZ's varied strategic functions without compromising the attractions of residential neighbourhoods where local uses predominate.
- (c) Sustain and enhance the City of London (and, although formally outside the CAZ (see para. 2.55), the Isle of Dogs) as a strategically important, globally-oriented financial and business services centre.

14.2.2 Policy 4.1 (Developing London's Economy) states that the mayor will work with partners to

- (a) Promote and enable the continued development of a strong, sustainable and increasingly diverse economy across all parts of London, ensuring the availability of sufficient and suitable workspaces in terms of type, size and cost, supporting infrastructure and suitable environments for larger employers and small and medium sized enterprises; and
- (b) Support and promote the distinctive and crucial contribution to London's economic success made by central London and its specialist clusters of economic activity; and
- (g) Promote London as a suitable location for European and other international agencies and businesses.

14.2.3 Policy 4.2 (Offices) states that stakeholders should support the redevelopment of office provision to improve London's competitiveness, and recognise and address strategic as well as local differences in meeting this policy to meet the distinct needs of the central London office market including by sustaining and developing the dynamic clusters of "world city" and other specialist functions and business environments, should encourage the renewal and modernisation of the existing office stock in viable locations to improve its quality and flexibility, and seek increases in the current stock where there is local evidence of sustained demand for office based activities in the context of offices.

14.3 The City of London Core Strategy states:

14.3.1 Strategic Objective 1 – To maintain the City's position as the world's leading international financial and business centre

14.3.2 Policy CS1 - 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:

- (i). Increasing the City's office floorspace stock by 1,500,000 m² gross during the period 2006 – 2026 to meet the needs of projected long term economic and employment growth, phased as follows:

2006 – 2011: 750,000 m²

2011 – 2016: 250,000 m2

2016 – 2021: 250,000 m2

2021 – 2026: 250,000 m2

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

(ii). 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.

(iii). Encouraging the supply of a range of high quality office accommodation to meet the varied needs of City office occupiers.

(iv). Promoting inward investment and encouraging developers and businesses to invest and locate in the City.

(v). Managing short-term over supply in the office market through a flexible approach to alternative temporary uses for vacant offices and sites, where such uses would not prejudice the eventual return of the site to office use."

14.3.3 Under CS1 "Who will Deliver – how will we make it happen" it is stated that "the City may use development management, compulsory purchase powers, land ownership and joint working with developers to assist in site assembly, where appropriate...."

The key benefits of the Development are summarised below and in addition the Development also secures a planning obligation package together with a contribution to Crossrail.

In conclusion, the use of S227 to enable the operation of S237, if necessary, 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 (including through the provision of offices) and of the environmental and social well-being of this part of the City (including through the improvement of public realm, productive use of a vacant site and significant employment generation, potentially through occupation by a major institution).

15. Whether the benefits of the Development could be achieved without giving rise to all or some of the infringements

15.1 The key benefits of the Development which need to be balanced against the infringements are:

(i) the provision of an employment led development suitable for a major occupier and/or other users;

(ii) the provision of around 113,817 sq.m of high quality office space comprising regular flexible floorspace on large floorplates of the type necessary to accommodate business and financial service users and enabling projected employment generation of about 9,500 people (which is increased from employment potential for about 5,500 in the previous buildings, and surveyed at 2,204 employees in 2001);

(iii) the productive use of the currently vacant (and previously significantly under occupied) Redevelopment Site.

15.2 As indicated in 12.2 a reduced building would be unlikely to meet the requirements of a major occupier and would not achieve the full potential of the site

16. Are the public benefits proportionate to the interference

16.1 Human Rights issues arise in respect of the proposed arrangements. ODPM Circular 06/04 "Compulsory Purchase and the Crichton Down Rules" advises that compulsory acquisition under S.226 TCPA (and therefore, by analogy, an acquisition by agreement under S.227 TCPA which has the effect, by virtue of S237 of infringing convention rights) "... should only be made where there is a compelling case in the public interest. An acquiring authority should be sure that the purposes 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 Corporation is required to act in accordance with the European Convention on Human Rights (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 S.227 which engages S237 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.

16.2 However, the rights 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 (in relation to 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".

16.3 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.

- 16.4 In the present case it is considered that the public interest in facilitating the Development outweighs the rights of the individuals to peaceful enjoyment of their possessions and that the proposed use of S237 powers amounts to a proportionate interference in all the circumstances. In this regard the availability of compensation to those who are deprived of their Rights of Light is of relevance to the issue of Proportionality. This is reinforced by the fact that the Developer would be required to covenant that even after S237 was engaged, compensation would be paid to the 2 neighbouring owners at no less than £1.2M each. It is also reinforced by the fact that the developer would be required to compensate the leaseholder of Stonecutter Court as if S237 were not engaged.
- 16.5 The public benefits arising from the redevelopment are set out above.
- 16.6 The planning implications of the Development have been fully considered. The redevelopment has been deemed acceptable: (see the Planning Report). Permission was granted and a Section 106 Agreement entered into on 28 October 2013.

17. Legal Implications

- 17.1 The City Corporation may acquire an interest in the land to be developed by agreement under Section 227 Town and Country Planning Act 1990. Such acquisition must be for a reason for which land can be compulsorily acquired under Section 226 Town and Country Planning Act 1990. The purposes for which land may be acquired are defined in Section 226(1) as follows:
- i) 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
 - ii) 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.
- 17.2 In this case, the purposes fall within the ambit of section 226(1)(a) as the carrying out of the scheme would be facilitated as described in this report.
- 17.3 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 achievement or the promotion or improvement of one or more of the following objects (namely) the economic, social or environmental well-being of their area. The City Corporation would need to conclude that the acquisition would satisfy these tests to take the matter further. Advice on this is provided above in the body of the report.
- 17.4 At its meeting in June 2011 the Court of Common Council resolved that:
Acquisitions of interests in land under S227 Town and Country Planning Act or appropriations for planning purposes may be considered on a case by case basis in order to engage S237 powers in order to allow developments to proceed (where they would otherwise be prevented by injunctions prohibiting infringements of rights of light) subject to (i) such development being in the public interest, such public interest being sufficient to justify interference with

any private rights and proportionate , and the relevant criteria in Appendix 5 being met and (ii) all financial liabilities of the City being indemnified.

- 17.5 Where such acquisitions or appropriations are so considered on a case by case basis, the Planning and Transportation Committee be authorised to determine whether such acquisition or appropriation may be authorised.

The criteria at Appendix 5 were adopted.

- 17.6 The City Corporation would have power to dispose of the interest acquired by agreement under Section 227 by virtue of Section 233 Town and Country Planning Act 1990. It is not necessary to justify acquisition for the authority itself to carry out the purposes. It may be acquired with a view to onward disposal. Disposal may take place under Section 233 where the City Corporation is satisfied that it is expedient in order:

- i) to secure the best use of that or other land and any buildings or works which are to be erected or carried out on it (whether by themselves or by any other person); or
- ii) to secure the erection, construction or carrying out on it of any building or works appearing to them to be needed for the proper planning of the area.

18. Financial and Risk Implications

- 18.1 In implementing S237 arrangements and disposing of any interest acquired under S227 back to the Developer, the City Corporation will need to be satisfied that the Owner is in a position to commence and complete the Development in a reasonable period.
- 18.2 All liabilities and legal costs arising from the arrangements (including any compensation liabilities falling to the City Corporation and potential costs associated with undertaking negotiations in relation to proceedings brought in the Lands Chamber) would need to be met by the Developer.
- 18.3 Section 237(5) of the TCPA provides that the liability to pay compensation (if not discharged by the Developer) would be enforced against the City Corporation. The Developer has agreed to provide the necessary indemnity against any costs and expenses and compensation liabilities.

19. Consultees

The Town Clerk and Chamberlain have been consulted in the preparation of this report. The 2 neighbouring owners have been advised of the report and the proposals. Your Committee will be made aware of any representations received from them.

Conclusions

20. For the reasons set out above it is considered that the criteria set out in the June 2011 report to the Court of Common Council (set out below) are met.

- 20.1 The use of the statutory powers is required in that:
- (i) The infringements cannot reasonably be avoided (see section 12)
 - (ii) The easements to be interfered with cannot reasonably be released by agreement with affected owners (see section 12).
 - (iii) The Development is prejudiced due to the risk of injunction and adequate attempts have been made to remove the injunction risks (see section 12).
- 20.2 The authority thinks it will facilitate the carrying out of development, redevelopment or improvement on or in relation to land (S.226(1) Town and Country Planning Act 1990) (see section 13).
- 20.3 The authority thinks that the development, redevelopment or improvement will contribute to the promotion or improvement of the economic, social or environmental well-being of the authority's area and therefore it is in the public interest that it be carried out (S.226(1A) Town and Country Planning Act 1990), and those benefits could not be achieved without giving rise to all or some of the infringements. (see sections 14 and 15).
- 20.4 It is in the public interest that the Development is carried out (see sections 14 and 16).
- 20.5 The public interest to be achieved is proportionate to the private rights being infringed (Human Rights Act 1998) (see section 16)
21. 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 Section 237 of the Town and Country Planning Act 1990 (TCPA) should be approved on the following basis.
- The Redevelopment Site is presently under used. The Development will provide modern offices and an attractive public realm, and will enable the City to meet projected demand for high quality office space
 - The size and configuration of the new office space would be of benefit to the business community and would contribute to the targets contained in policy CS1 of the City of London Development Framework;
 - All the Considerations set out in paragraph 9 have been properly addressed and on balance the outcome of these Considerations supports the Recommendations;
 - The engagement of section 237 will facilitate the carrying out of the Development and,
 - Those with Rights of Light that are infringed will be entitled to compensation.

Background papers:

Planning Report

237 Report to Court of Common Council 9/6/11

Appendices:

- **1: Site Plan**
- **2: Image of Development**
- **3: List of affected properties**
- **4: (a) to (c): Cut back drawings**
- **5: List of criteria adopted June 2011**

Contact: *Deborah Cluett, Assistant City Solicitor*
020 7332 1677; Deborah.cluett@cityoflondon.gov.uk