

APPENDIX 3

LEGAL IMPLICATIONS

Human Rights Issues:

1. The October 2015 DCLG publication “Guidance on Compulsory Purchase Powers and The Crichton Down Rules for the disposal of surplus land acquired by, or under threat of, compulsion” (“the CPO Guidance”) 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 [for which the compulsory purchase order is made] justify interfering with the human rights of those with an interest 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.
2. However, the rights to peaceful enjoyment of possessions 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”. In this case rights protected by Article 1 Protocol would be infringed.
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.

Section 237 Framework:

4. Section 227 TCPA 1990 authorises the City Corporation to acquire by agreement an interest in the land to be developed. Such acquisition must be for a purpose for which they would be authorised to acquire land compulsorily 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
5. 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.
6. 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.
7. 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 paragraphs 9 to 27 of the Report.
8. The Redevelopment Site lies within a conservation area. As a consequence, when deciding whether to exercise its power to acquire the Redevelopment Site for planning purposes in order to engage section 237, section 72(1) of the Planning (Listed Buildings and Conservation Areas) Act 1990 provides that the City Corporation must pay special attention to the desirability of preserving or enhancing the character or appearance of the conservation area. For the reasons given at paragraph 27 of the Report it is the view of officers that the proposed development would preserve the character and appearance of the Finsbury Circus Conservation Area, and therefore acquisition and engagement of section 237 would advance the objective set out in section 72(1) of the Planning (Listed Buildings and Conservation Areas) Act 1990.
9. 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.