

Committee(s):	Date(s):	Item no.
Planning and Transportation Committee	2 February 2016	
Policy and Resources Committee	18 February 2016	
<b>Subject:</b> Redevelopment of 120 Moorgate - Potential Acquisition of Land for Planning Purposes	<b>Public</b>	
<b>Report of:</b> Chief Planning Officer and Comptroller and City Solicitor	<b>For Decision</b>	
<b>Ward (if appropriate):</b> Coleman Street		
<p><b><u>Summary</u></b></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 &amp; Country Planning Act 1990 (“TCPA”) enabling the operation of powers under Section 237 of the Town &amp; Country Planning Act 1990 (“S237”) to facilitate the carrying out of the redevelopment of 120 Moorgate (the “Redevelopment Site”) (shown edged bold on the plan at <b>Appendix 1</b>) in close proximity to Moorgate Station where Crossrail works are currently being carried out.</p> <p>The City Corporation resolved to grant planning permission for a scheme in April 2011 (Ref: 11/00231/FULMAJ) and resolved to approve an amendment to the previously submitted scheme (mainly providing “cut backs” to the rear Finsbury Circus elevation of the previous scheme) (“the Development”) for the Redevelopment Site on 15 December 2015, also under reference 11/00231/FULMAJ. The Owners wish to commence the Development by mid-2016 at the latest in order to achieve delivery in 2019 to coincide with Crossrail opening.</p> <p>However, the delivery to the programme (and at all) is at risk due to the inability to settle one remaining rights of light claim, despite negotiations between the owners of 120 Moorgate (“the Owners”), and the owners of 1 Finsbury Circus (aka Britannic House) having commenced in 2013, and the prospect that the owner of 1 Finsbury Circus (who enjoys the rights of light) may be able to pursue injunctive relief.</p> <p>The Owners have 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. For this to occur it would be necessary for the City Corporation to acquire an interest in the Redevelopment Site, and the City’s compensation liabilities to be indemnified by the Owners.</p> <p><b>Recommendation</b></p> <p>It is recommended that subject to the Town Clerk being satisfied there is a suitable Indemnity in place, and subject to the Section 106 Agreement being completed and permission issued under reference 11/00231/FULMAJ, the Planning and Transportation Committee authorise:</p> <p>a. The acquisition of an interest in the Redevelopment Site by the City</p>		

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. That the terms on which the acquisition and disposal referred to in (a) above are to be made be delegated to the Town Clerk.

## Main Report

### Background

1. The City Corporation resolved to grant planning permission for a scheme in April 2011 (Ref: 11/00231/FULMAJ) and resolved to grant planning permission for a “cut back” scheme (“the Development”) for the Redevelopment Site on 15 December 2015 also under reference 11/00231/FULMAJ. The original permission was never issued due to the Section 106 Agreement not being completed. The cut-backs aim to reduce the light infringement caused to 1 Finsbury Circus. The Section 106 Agreement associated with the amended scheme is under negotiation and completion is expected shortly.
2. The resolution to grant planning permission of the Planning and Transportation Committee of 15 December 2015 is for the following (see **Appendix 2** for image):
  - i) “Partial demolition of existing building and erection of a building to comprise office (Use Class B1) and retail (Use Classes A1-A3) floorspace with associated parking, servicing and plant.”
  - ii) The redevelopment will provide offices (Class B1a) on the upper floors, and new retail units (Class A1-A3) at ground and basement levels with the retained bank (Class A2) use at part, middle and upper basement, ground and first floor levels.
  - iii) The proposed building would be in the form of two interlocking blocks. The development would comprise 3 basements, ground and seven floors in the front block on Moorgate and 3 basements, ground and ten floors in the rear block.
  - iv) The proposed development would provide 13,000 square metres gross external area of office space with three new retail units at ground and on two basement levels plus the existing Barclays Bank totalling 3,424 square metres of retail floorspace (Class A1-A3). Plant, parking and servicing floorspace totals 2,033 square metres making a total floorspace of 18,457 square metres.
  - v) The proposed development would increase the retail (A1, A2 and A3) provision on the site by 421 square metres and will increase the office (B1(a)) provision by 4,930 square metres.

- vi) Barclays Bank currently occupies the corner of the building on Moorgate and South Place. The bank has a lease until 2035 with no break option and is unwilling to relocate (temporarily or permanently). The owner has spent considerable time (over 4 years) in negotiating an agreement for the retention of the bank within its existing structure at middle basement, upper basement, ground and first floor level during the redevelopment. It would be incorporated in the new building with new facades to Moorgate and South Place.
- 3. The scheme provides an employment led mixed-use development that would provide an increase in high quality floorspace. In evaluating the Development the Chief Planning Officer considered it 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 leading international financial and business centre

### **Proposal**

- 4. The City Corporation was first approached in 2011 by the Owners to seek assistance in overcoming potential injunctable rights of light issues that would adversely impact on the achievement of the Development. The ownership of 1 Finsbury Circus subsequently changed hands in 2013 to the current owners and discussions have been on-going between them and Owners since that date. Further steps were taken to seek to engage with the owner of 1 Finsbury Circus with a view to reaching agreement. For reasons set out in this report agreement has not been reached and the Owners have made a formal request to the City Corporation by letter dated 4 December 2015. The request is annexed at **Appendix 5**
- 5. A right of light is an interest in land (i.e. an easement) which entitles a neighbouring landowner (the “Dominant Owner”) to enjoy light across an affected adjoining site. Any development which interferes with that right would constitute a breach of the easement that would entitle the Dominant Owner to claim an injunction preventing development or compensation for the effect of the light lost as a result of the interference.
- 6. 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 annex at **Appendix 3** to this report.
- 7. The Owner 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 Owners who would be able to proceed with redevelopment.

### **Considerations**

- 8. In making a decision as to whether to acquire an interest in the land for the planning purpose of facilitating the carrying out of the Development, the following matters are relevant considerations that should be taken into account by the City Corporation:-

- i) Whether rights capable of being overridden by the operation of section 237 exist, and whether they would be interfered with. In this case such rights do exist, namely the Rights of Light affected, and such rights would be interfered with if the Development proceeds.;
- 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 on what terms and in what timescale. In determining whether interference with the Rights of Light is necessary, the considerations taken into account should include the question of whether the scheme could be adjusted to avoid such interference ;
- iii) Whether acquisition will facilitate the carrying out of the Development. Matters to take into account under this heading include, whether planning permission is likely to be granted for the development and whether such development is likely to be carried out;
- 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 there is a compelling case in the public interest to justify authorising the carrying out of the Development notwithstanding that it would involve interference with rights to light, and 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”).
- vii) As the Redevelopment Site is situated in the Finsbury Circus Conservation Area 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.

Each of these issues is dealt with in turn.

### **The existing Rights of Light affected and the likely extent of Infringements**

9. The assessment as to which of the Dominant Owners would suffer sufficient injury to succeed in a claim for an injunction was a matter of both fact and law. Where

there is a clear risk of injunction, development cannot generally proceed until the elimination of that risk. The properties with potential injunctable rights have been assessed as being: Moorgate Hall, Riverplate House and 1 Finsbury Circus. Agreements have been settled in respect of Riverplate House, and agreed terms have been reached with the owner of Moorgate Hall. A further 3 properties (1 South Place, South Place Hotel and Finsbury Court) were considered to experience relatively small losses and/or were less than 20 years of age such that no Rights of Light would have accrued. The only outstanding Rights of Light issues sufficient to prevent the Development from proceeding therefore relate to 1 Finsbury Circus.

10. As regards the impacts in planning terms, 1 Finsbury Circus is a 208,536 square foot grade II\* listed building. It was extensively refurbished in the 1980s and again in 2008. It provides office floorplates of around 20 – 22,000 square foot on typical upper levels with natural light available from all sides as well as from an atrium. The redevelopment of 120 Moorgate impacts solely on the rear façade of 1 Finsbury Circus which is north facing and currently overlooks an unattractive service yard. The area affected by the original (2011) proposals to redevelop 120 Moorgate was 5,692 square feet which represents 2.7% of the building
11. The currently proposed “cut back” scheme will affect 4,014 square feet of floor area representing 1.9% of the total area of the building at 1 Finsbury Circus and which is a reduction of 29.5% against the impact of the original redevelopment proposals. Given that this space is at the rear of the building, that it overlooks a poor quality service area and that the light levels are maintained by artificial lighting in a modern office building such as this, it is considered that the impact on 1 Finsbury Circus is relatively minor at a practical level, while the redevelopment of 120 Moorgate will bring forward significant economic and environmental benefits as set out below and in **Appendix 6**

**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. The Development represents cut backs to the 2011 proposal in order to reduce the Right to Light infringements in response to previously expressed concerns of the owner of 1 Finsbury Circus. The “cut backs” are considered to reflect a solution which the Owners consider a reasonable compromise following a series of “workshops” undertaken with the owner of 1 Finsbury Circus during 2014. The Owner considers that whilst it would be possible to marginally increase the amount of cut back this would have a disproportionate impact on the amount of space provided by the development when compared to the degree of improvement to the quality of light to 1 Finsbury Circus. Further cut backs would also impact on the layout of the upper floors in terms of the effective and efficient use of the space. In addition, the area of the proposal which 1 Finsbury Circus considers too injurious to its light cannot be moved from its critical location because it forms part of the Development’s core. The position of the core is fixed by the requirement to retain the existing core location as a consequence of having to retain Barclay’s Bank in situ during the redevelopment, including their existing service core. Cutback drawings at **Appendix 4** have been prepared to show the extent of the changes made to the Development in comparison to the 2011 permission.

13. Given the issues set out above, officers are of the view that the scheme cannot be amended further in order to avoid interference with the rights to light enjoyed by 1 Finsbury Circus. Interference with rights of light to the extent caused by the Development is therefore necessary to facilitate the carrying out of the Development.
14. 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.
15. The history of the Owners' negotiations with the owner of 1 Finsbury Circus, whose rights of lights are infringed by the Development is set out on pages 6, 7 and 8 of the Owner's letter at **Appendix 5**. The owner of 1 Finsbury Circus advised the Owners that they would deal with Rights of Light issues directly and on behalf of their main tenant who has various rights within its lease which would restrict the Owner from entering into any agreements which impact in any way on their light. **Appendix 5** shows that the Owner has been making reasonable efforts to reach agreement since 2011, including detailed discussions at joint workshops, aimed at identifying acceptable "cut backs" (and resulting in the amendments to the scheme). Albeit this negotiation was largely in the context of the previous scheme, discussions have included the "cut back" scenario, and further discussions in the context of the revised scheme have been undertaken. On 20 January 2016 the City received an email from the owner of 1 Finsbury Circus advising that they had recently been working very hard with their advisers and senior management to provide the City with ideas of how they could reach agreement and offering to come and speak directly with the City. For the first time the owner of 1 Finsbury Circus confirmed that they "are now willing to settle this by compensation" , proposed to hire a surveyor, and said they were searching for a local expert to attend daily discussions and meetings and advise them. Unfortunately, however, given the history of delays and deferral of meaningful negotiations, as well as the fact that the owners of 1 Finsbury Circus have already had professional advisers engaged, the contents of the email are not considered to alter the conclusion at paragraph 16 below. A copy of this report will be provided to the owner of 1 Finsbury Circus, and any representations from them will be reported to your committees.
16. In the light of the negotiation history it is considered highly unlikely agreement would be reached with the owner of 1 Finsbury Circus, to allow the Owners to achieve delivery by 2019.

### **Whether acquisition will facilitate the carrying out of the development**

17. The City Corporation have resolved to grant planning permission for the Development subject to the landowners entering into a planning obligation. The landowners are likely to enter into such an obligation and therefore it is highly likely that planning permission will be granted. The Development cannot be carried out unless those entitled to rights of light agree to infringements (or unless interference with those rights is authorised by statute).

18. Given the background of unsuccessful attempts to progress reasonable proposals for settlement since 2013 it is considered unlikely that agreement can be reached. The use of S237 will facilitate the carrying out of the Development. If the Redevelopment Site is acquired by the City for planning purposes and section 237 is engaged, it is highly likely that the Development will proceed.

**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.**

19. The recent planning history of the Redevelopment Site is outlined in the Background section of this report. The scheme provides an employment led mixed-use development that would provide an increase in high quality floorspace in close proximity to the new Crossrail Moorgate Ticket Hall. The Development is considered to be in substantial compliance with policies. The relevant policy analysis and evaluation is set out at **Appendix 6**. The evaluation concludes that the Development will contribute to the economic well-being of the City through provision of offices to meet demand, and will contribute to the environmental and social well-being of the City through the enhancement of the Principal Shopping Centre, the Finsbury Circus Conservation Area and the Grade II\* listed 1 Finsbury Circus.

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

20. The key benefits of the Development which need to be balanced against the infringements are:
- i) the provision of an employment led mixed-use development suitable for a major occupier and/or other users and support accommodation and including retail to provide support services to the workforce in the area;
  - ii) the provision of around 13,000 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 to meet projected demand (which is increased by about 4,930 sq m from the existing provision);
  - iii) enhancement to the character and appearance of the Finsbury Circus conservation area and setting of the Grade II\* listed 1 Finsbury Circus;
  - iv) the enhancement of the retail accommodation within the Moorgate Principal Shopping Centre with the existing 6 retail units being replaced by 4 larger upgraded units (from the existing total of 3,003 sq m to the proposed total of 3,424 sq m) (including enhanced provision for Barclay's Bank), enhancing the vitality and viability of the Principal Shopping Centre;
  - v) the above benefits are considered particularly key given the location of the Redevelopment Site within close proximity to Liverpool Street Station and

Moorgate Station, which will be a principal Crossrail interchange, at a prominent gateway position into the City.

21. As indicated in paragraphs 12 and 13, the Development cannot be further altered to make additional reductions to the right of light infringements to 1 Finsbury Circus. If the Development does not proceed, the benefits identified above will not be delivered.

**Is there a compelling case in the public interest to justify authorising the carrying out of the Development notwithstanding that it would involve interference with rights to light and are the public benefits proportionate to the interference**

22. Advice on the approach to be taken when considering compulsory acquisition of land is given in the October 2015 DCLG publication “Guidance on Compulsory Purchase Powers and The Crichel Down Rules for the disposal of surplus land acquired by, or under threat of, compulsion” (“the CPO Guidance”). The advice given in the CPO Guidance should be taken into account in deciding whether to acquire land in order to engage the provisions of section 237. At paragraph 12, the CPO 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 section 237. Given that it is in the public interest that the Development should proceed, 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 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 section 237.
23. Human Rights issues arise in respect of the proposed arrangements. The principles to be applied are set out in **Appendix 3**.
24. 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 justified and proportionate interference with Article 1 Protocol 1 rights (and any Article 8 rights which may be affected) 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. In addition, the Owner has confirmed that the compensation offered to the Owner of 1 Finsbury Circus will be no less than the highest offer made to date in relation to the Development, and this will be included as a binding requirement in the proposed Indemnity.
25. The public benefits arising from the redevelopment are set out and the public interest is demonstrated in this report (in particular in paragraphs 19 and 20 and **Appendix 6**).
26. The planning implications of the Development have been fully considered (see Appendix 6). The redevelopment has been deemed acceptable in that it was resolved to grant planning permission on 15 December 2015.

## **Section 72(1) of the Planning (Listed Buildings and Conservation Areas) Act 1990**

27. When considering the application for planning permission for the Development at its meeting held on 15<sup>th</sup> December 2015 the Planning and Transportation Committee accepted the City Planning Officer's recommendation. The City Planning Officer advised that the scale, bulk and design of the Development (and therefore the Development) would preserve and enhance the character and appearance of the Finsbury Circus Conservation Area. It remains the view of the City Planning Officer 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

### **Legal Implications**

28. The legal framework for the proposed acquisition is summarised at paragraphs 5 and 6 above, and detailed at **Appendix 3**.

### **Financial and Risk Implications**

29. In implementing S237 arrangements and disposing of any interest acquired under S227 back to the Owner, 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. When disposing of any interest acquired the City will have to comply with the requirements of section 233 of the TCPA 1990.
30. 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 Owner.
31. Section 237(5) of the TCPA provides that the liability to pay compensation (if not discharged by the Owners) would be enforced against the City Corporation. The Owners have agreed to provide the necessary indemnity against any costs, expenses and compensation liabilities, however, the precise terms have yet to be agreed.

### **Consultees**

32. The City Planning Officer, Town Clerk, Chamberlain and Comptroller & City Solicitor have been consulted in the preparation of this report.

### **Conclusions**

33. It is considered that the potential acquisition of the Redevelopment Site for the planning purposes of the Development in order to engage the provisions of Section 237 of the Town and Country Planning Act 1990 (TCPA) so as to authorise the Development notwithstanding that it involves interference with rights to light should be approved on the following basis.

- 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 Local Plan 2015 ;
- The enhancement of the retail accommodation in the Principal Shopping Centre will contribute to its vitality;
- The enhancement to the character and appearance of the Finsbury Circus conservation area and setting of the Grade II\* listed 1 Finsbury Circus
- All the considerations set out in paragraph 8 have been properly addressed and on balance the outcome of these considerations supports the Recommendations;
- The Recommendations will facilitate the carrying out of the Development.
- Those with Rights of Light that are infringed will be entitled to compensation.

**Background papers:** Report to Planning and Transportation Committee 15 December 2015  
(ref: 11/00231/FULMAJ)

**Appendices:**

- 1. Plan of Redevelopment Site**
- 2. Image of Development**
- 3. Legal Implications**
- 4. Cut back comparison**
- 5. Owner's request for the City to use S.237**
- 6. Policy Summary and Evaluation**

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