

Committee(s): Planning and Transportation Committee – For decision Policy and Resources Committee – For decision	Date: 10th March 2016 17th March 2016
Subject: Redevelopment of 21 Moorfields - Potential Acquisition of Land for Planning Purposes	Public
Report of: Chief Planning Officer and Comptroller and City Solicitor	For Decision
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Summary

1. This report seeks your approval in principle 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 21 Moorfields (the “Redevelopment Site”) (shown edged bold on the plan at **Appendix 1**).
2. The City Corporation granted planning permission for a scheme (“The Development”) for the Redevelopment Site on 25th November 2015 under reference 14/01179/FULEIA. The Owners wish to commence preparatory works (which may include costly pile enabling and piling) in April 2016 in order to maximise the ability to deliver the completed development to the shortest programme by 2020, and to complete it with the minimum delay after Crossrail’s opening at Moorgate. Delay would prejudice the prompt upgrade of public realm in the vicinity and it would be detrimental to the rejuvenation of the area if the Site remains vacant and undeveloped for any considerable period of time after the Crossrail Station opens. However, the Owner has advised that the programme is now at risk due to the inability to settle and conclude legal agreements in respect of a significant number of remaining rights of light claims, and the prospect that those enjoying the rights of light may be able to pursue injunctive relief.
3. 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 Owner.
4. In November 2011 the Policy and Resources Committee decided that “subject to any necessary approvals, in future, appropriations such as this be determined by Planning and Transportation Committee only. The “necessary approvals” would require Court of Common Council to delegate such decisions to Planning and Transportation Committee only. Unfortunately, due to an oversight this has not been done. It is proposed to seek the appropriate delegation from the Court of

Common Council in April 2016 by way of an amendment to the Planning and Transportation Committee's terms of reference.

Recommendations

5. It is recommended that:-

- (a) Planning and Transportation Committee and Policy and Resources Committee authorise acquisition of an interest in the Redevelopment Site by the City Corporation under S227 of the Town and Country Planning Act 1990 in order to engage powers under S237 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, subject to the Town Clerk determining in consultation with the Chairman and Deputy Chairman of Planning and Transportation Committee:-
 - (i) that adequate attempts have been made to remove injunction risks by negotiating release of affected rights of light by agreement and that those entitled to rights of light are not prepared, by agreement (on reasonable terms and within a reasonable time) to permit infringements of those rights in time to achieve the development programme; and
 - (ii) that there is a suitable Indemnity in place; and
 - (iii) the terms on which the acquisition and disposal referred to above are to be made.
- (b) following the Policy and Resources Committee's decision that appropriations such as this should in future be determined by Planning and Transportation Committee only, the appropriate delegation be sought from the Court of Common Council in April 2016 by way of an amendment to the Planning and Transportation Committee's terms of reference.

Main Report

Background

- 1 The City Corporation resolved to grant planning permission under reference 14/01179/FULEIA for the redevelopment of 21 Moorfields (the "Redevelopment Site") on 17 March 2015, subject to a Section 106 Agreement. On 2 June 2015 the City Corporation resolved to rescind existing city walkway known as Moorfields Highwalk to enable the redevelopment to proceed, subject to a Section 106 Agreement providing for re-provision of the city walkway. The Section 106 Agreement relating to both the planning permission and the city walkway rescission was completed and the planning permission issued, and city walkway rescission put in train, on 25 November 2015. The Development was supported by the Mayor.
- 2 The planning permission granted by the City Corporation on 25 November 2015 under reference 14/01179/FULEIA is for the following (see **Appendix 2** for image):

- i) Redevelopment with two office buildings around a podium level landscaped public square fronted by retail units.
 - ii) A new City Highwalk located on the southern edge of the development at podium level to provide a direct route between Moorfields/Moorgate Station and the Barbican.
 - iii) An eastern building, fronting Moorfields, rising to 7 floors above podium level on the Moorfields frontage, and rising to 14 floors above podium at its highest point (85.85m AOD). The office lobby would be at podium level with stairs, escalator and lift access from ground level in Moorfields and from the podium. A western building, fronting Moor Lane, rising to 4 floors above podium level on the Moor Lane frontage, setting back and stepping up to 7 floors above podium at its highest point (52.95m AOD).. The office lobby would be at podium level with its main entrance in the new public square and a secondary entrance on Moor Lane.
 - iv) The proposed floorspace is: Offices – 63,021 sq.m GIA, 64,684 sq.m GEA; Retail – 1,122 sq.m GIA, 1,156 sq.m GEA.
 - v) The existing Highwalk escalators and stair on Moorfields are due to be replaced by Crossrail as part of their works. The redevelopment proposal involves replacing these with new escalators and adding a new lift. On Moor Lane there are existing stairs and a lift that would no longer be used. These would be replaced by a new lift and stairs. The Highwalk bridge over Moor Lane is proposed to be increased in width and the bridge over Fore Street Avenue would be altered to meet changes in levels
 - vi) Both new buildings would be serviced from a loading bay in Fore Street Avenue. No car or motor cycle parking is proposed. Pedal cycle parking and changing facilities are provided.
- 3 As set out in the Chief Planning Officer's report to the Planning and Transportation Committee of 17 March 2015, 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 leading international financial and business centre.
- 4 The scheme provides an employment led mixed-use development that would provide an increase in high quality floorspace. The new city walkway and changes to the city walkway bridges over Moor Lane and Fore Street provide a good replacement for the existing highwalk. The public square would provide an attractive feature and an adequate replacement for existing city walkway spaces.
- 5 The office buildings presently on the site were erected in the 1960's. They comprised three blocks entered at podium level. They have basement, mezzanine, ground and six upper floors running north-south across the site with lower linking blocks on the northern and part of the southern sides. The site has been largely vacant and neglected over a number of years. Most of the block on the Moorfields frontage has been demolished to create the Crossrail

construction site and the owner has served notice on the City of its intention to commence demolition of the remaining buildings which it is anticipated will be completed in December 2016. Demolition of the raft and foundations of the original Moorfields block by Crossrail means that that part could not be reconstructed as part of a refurbishment and therefore any refurbishment of the remaining buildings would provide 27% less space than in the original block. Demolition of the remaining buildings is needed as they no longer suit the needs of modern office occupiers having low floor to floor heights of only 3.20m. The existing buildings also have a structural grid which incorporates a row of twin columns within the centre of the floor plates limiting floor plate sizes, however as Crossrail has installed a super pile of sufficient size to facilitate redevelopment of the site, new office space which will suit the needs of modern City office occupiers may now be developed by cantilevering over the ticket hall. This enables the site's potential to be maximised so as to provide a significant increase in net internal office space over the existing.

Proposal

- 6 The City Corporation has been approached by the Owners to seek assistance in overcoming potential injunctable rights of light issues that would adversely impact on the achievement of the Development
- 7 A right of light is an interest in land (i.e. an easement) which entitles a neighbouring landowner (the "Affected Owner") 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 compensation for the effect of the light lost as a result of the interference.
- 8 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.
- 9 The Owners have 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, so as to engage the provisions of S237. Such interest would be effectively transferred back to the Owners who would be able to proceed with redevelopment. The Owner's request is annexed at **Appendix 6**.

Considerations

- 10 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 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 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 there is a compelling case in the public interest to justify interference with rights, and in particular whether the public benefits arising from the proposed development are proportionate to the infringements, and in particular to any interference with rights guaranteed by the European Convention on Human Rights (“Convention Rights”).

Each of these issues is dealt with in turn.

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

- 11 In terms of the history of negotiations with persons whose rights of lights are infringed by the Development, the Owners have advised the City Corporation that they instructed specialist rights of light surveyors in 2012 to advise on design and massing in order to minimise the impact of the proposed development on neighbouring properties. The surveyors have analysed the impact of the proposed redevelopment on the adjoining properties and the Owners have had advice in relation to the likely levels of damage to those properties. Based on the advice, they successfully agreed and completed deeds with six parties and settlements in principle of a number (twenty-two out of a potential thirty six claims).
- 12 The assessment as to which of the Affected Owners would suffer sufficient injury to succeed in a claim for an injunction is a matter of both fact and law. Where there is a clear risk of injunction, no development can proceed until the risk has been addressed. At the time of writing this report, the Owners have successfully negotiated agreements in principle with the vast majority of the Affected Owners considered to come within this category but the negotiation of legal agreements is proceeding slowly. Six rights of light deeds have been completed to date but there are currently twenty-two settlements awaiting execution and nine properties in respect of which agreement has not been reached with the Affected Owners. All but two of those 9 properties are owned by the City Corporation. In the case of the City Corporation’s ownership,

negotiations are in hand. The Owners have indicated that they will continue to negotiate with those with interests in the two remaining properties (one commercial and one residential), but two of those owners are based abroad. The Owners have advised that, absent a resolution by the City that they will acquire the Site to engage S237, the letting of the enabling works and piling contracts will be delayed until deeds of release have been entered into by the owners of the 30 properties which have no deeds of release. The construction programme envisages that the contract for the piling and enabling works will be let in April 2016 and the programme will start immediately thereafter, with practical completion being achieved in the first quarter of 2020. The Owners are of the view that there is no realistic prospect that agreement will be reached and binding deeds of release entered into with all affected owners in time to enable the development to commence in April 2016. The various affected properties with potential injunctable rights are listed at **Appendix 3**. All settlements agreed to date would be honoured by the Owner, and in other cases appropriate offers of compensation have to be made. This would be secured in the Indemnity required by the City prior to proceeding with any acquisition. Owners could also refer the level of compensation to the Lands Chamber.

- 13 As regards the impacts in planning terms, issues of daylight sunlight and overshadowing were fully considered when the committee resolved to approve the redevelopment in 2015. Concerns raised by Barbican residents on the impacts to their sunlight and daylight were considered. The Chief Planning Officer advised that the proposal was acceptable, and it was the presence of existing balconies, rather than the size of the proposed development, which would be the main factor in the relative loss of daylight and/or sunlight. Further of the 22 residents with potentially injunctable rights of light, the Owners have agreed in principle terms to enter into settlements with all but one resident. An extract from the 17 March 2015 Committee report evaluating the daylight/sunlight impacts is annexed at **Appendix 4**.

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

- 14 The Owners have advised that it is not possible to make small alterations to the size or shape of floors of the Development, or reduce it by a few floors, and have any meaningful impact on the rights of light position.
- 15 In this regard, the cutback drawing at **Appendix 5** has been prepared by the Owner's surveyor to show the extent of the changes that will need to be made to prevent infringement on properties with potential injunctable rights. This demonstrates that it is not possible to have any significant effect on the infringements without a substantial design change that alters the appearance of the Development significantly and results in a substantial loss in floor space which renders the Development unviable. In terms of design and viability, interference with rights of light is therefore necessary to facilitate the Development.

- 16 In deciding whether it is necessary to acquire an interest in land under S227 so as to engage the provisions of 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.
- 17 The Owners have asked the City to take into account the following:
- i) Despite the best efforts of the Owners the legal and remaining commercial negotiations with other affected parties are proceeding slowly – in particular 2 of the affected properties are owned by individuals or companies located in China
 - ii) Even where progress has been made and commercial terms have been agreed, this is still subject to being able to agree the form of deed of release and complete it. There are still a significant number of remaining rights of light claims, and until all deeds of release have been entered into there is still a risk of injunctive relief being sought by any owner who has not entered into a deed of release
 - iii) There is no realistic prospect that agreement will be reached and binding deeds of release entered into with all Affected Owners in time to enable the necessary enabling and piling works and construction to commence in 2016 and complete by 2020
 - iv) £79.8M has already been expended to date on the development (including acquisition costs) and the enabling and piling works programmed to commence in April 2016 are at a significant cost premium compared to a standard development site because of the technical difficulties of constructing above the existing Moorgate and Crossrail Stations. At the point of letting those work packages the Owner will be committed to £48.2M in below grade construction costs, and cannot commit to this without certainty the development is not threatened by the risk of injunction.
 - v) The enabling and piling works are informed by TfL site surveys which will no longer be valid if the enabling and piling is delayed beyond 3 months. The TfL survey teams would have to undertake new site surveys and the resulting added mobilisation time is likely to add a further 3-6 months to the completion date on top of the month on month delay.
 - vi) Board approval to release funding for the next work phases programmed for April 2016 is to be sought in late March, but for the reasons explained in (i) to (v) this cannot be approved unless the injunction risk from rights of light has been addressed.
- 18 It is highly unlikely agreement would be reached with all Affected Owners in a timeframe that allows the Owners to embark on the preparatory works and start their programme, on completion of demolition, aimed at delivery with the minimum of delay following Crossrail's opening. Delaying construction would also delay progress in carrying out the public realm upgrade in the vicinity.

- 19 Further this is not a development that can proceed speculatively without a pre-let. The Owners are currently actively pursuing a pre-let and the potential tenant (or any potential tenant) is highly unlikely to commit to a pre-let without having certainty around the programme and the comfort of knowing that the injunction risk from rights of light has been removed. There is active demand across Central London currently for 3.3 million sq ft of office space and this is for occupiers with requirements in excess of 100,000 sq ft. Many of these occupiers have lease events in 2019 onwards. Occupiers are looking to commit to schemes as soon as possible and need certainty on building and delivery dates to make their decisions. In order to capture the opportunity for substantial pre-lets and to meet the strategic need to provide prime office floor space to meet the predicted demand, the programme for 21 Moorfields would need to achieve practical completion by 2020. Demonstrating the ability to deliver 21 Moorfields in this timescale is key to achieving a pre-let for the development.
- 20 The Owners agreement with the freehold owners of the site, London Underground enables them to drawdown a long-leasehold interest by way of two new headleases, and permits the transfer of this long-leasehold interest to the City so as to enable the engagement of S237. However, before that, and in advance of drawing down the two new headleases, in order to maintain the development programme to achieve practical completion by 2020, the enabling and piling works contracts need to be let. The Owners need the City to commit to exercise S237 powers so that it is clear that the development can proceed and the threat of injunction risk no longer subsists prior to letting these contracts and committing very substantial additional capital associated with the pile enabling and piling works.
- 21 The enabling and piling works contracts need to be let in order to maintain the development programme to achieve practical completion by 2020. It is highly unlikely that deeds of release will be completed relating to all Affected Owners prior to that date given the history of negotiations and the number of affected properties where deeds of release have not yet been completed. If, before April 2016, deeds of release are not entered into with those entitled to the rights of light, engagement of S237 will be necessary to facilitate the development in accordance with the programme, and achieved the desirable outcome of achieving practical completion in 2020, However if the recommendation of the City Planning Officer and Comptroller and City Solicitor is accepted, S237 will not be engaged unless the Town Clerk is satisfied that reasonable attempts to reach agreement have been made by the Owners.

Whether acquisition will facilitate the carrying out of the development

- 22 The currently expected programme for the Development is outlined at paragraph 17 above. However, the Development cannot be carried out unless those entitled to rights of light agree to infringements (or the infringements are authorised by S237). To maintain the programme in order to maximise the ability to deliver the completed development by 2020, the Owners need to let the enabling and piling works contracts by April 2016. However, given the financial incentive for those with rights of light interests not to agree to allow the infringement and the negotiation history demonstrating a number of “stalled”

negotiations, and in the absence of agreement, the acquisition of the Redevelopment Site and engagement of S237 will facilitate the carrying out of the Development.

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.**

23 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. It would provide public realm improvements, which are particularly key in close proximity to the new Crossrail Moorgate Ticket Hall, which will become a major transport hub. The Development is considered to be in substantial compliance with policies.

24 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 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

25 The City of London Local Plan includes the following policies:

- i) Under Implementation And Delivery it states that the City Corporation 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; and
- ii) Strategic Objective 1 which is “to maintain the City’s position as the world’s leading international and 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 – 2016 to meet the needs of projected long term economic and employment growth, phased as follows:

2011 – 2016: 650,000 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.

- 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.

iv) Policy DM 1.2 which is “To promote the assembly and development of large office schemes in appropriate locations”.

v) Policy DM 1.3 which is “To promote small and medium sized businesses in the City”.

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 ...”.

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 Corporation may consider acquiring interests in land or appropriating land for planning purposes to enable development to proceed.

26 The provision of open space is supported by the following policies of the Local Plan:

i) Policy CS19 “To encourage healthy lifestyles for all the City’s commuters through improved access to open spaces and facilities, increasing the number and quality of open spaces in the City”.

ii) Policy DM19.1

“1. Major commercial and residential developments should provide new and enhanced open space where possible. Where on-site provision is not feasible, new or enhanced open space should be provided near the site, or elsewhere in the City.

2. New open space should:

- a) be publicly accessible where feasible; this may be achieved through a legal agreement;
- b) provide a high quality environment;
- c) incorporate soft landscaping and Sustainable Drainage Systems, where practicable;
- d) have regard to biodiversity and the creation of green corridors;
- e) have regard to acoustic design to minimise noise and create tranquil spaces.”

The key benefits of the Development are summarised in paragraphs 3 – 5 and 23 and in addition the Development also secures a planning obligation package together with a contribution to Crossrail.

27 In conclusion, the acquisition of the Redevelopment Site for planning purposes pursuant to S227 so as to engage S237, 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 and social well-being of this part of the City (for example through the provision of public realm, productive use of a largely vacant site, provision of development above the buildings demolished for Crossrail works, thereby filling an unsightly and wasteful townscape “gap” around and above a key transport node, and significant employment generation in immediate proximity to a new Crossrail interchange).

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

28 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 63,000 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 and enabling projected employment generation of about 5,500 people (only 112,000 sq ft of the

original buildings remain and the site has been largely vacant and derelict for a number of years.) ;

- iii) the provision of public realm improvements including new public spaces comprised in the high level walkway and bridges. This is particularly key given that it will provide enhanced access between the barbican and Moorgate (including the new Moorgate Station Ticket Hall);
 - iv) the productive use of a partly vacant Site which will be fully demolished by December 2016;
 - v) the replacement of buildings demolished by Crossrail and the Owner, and the resulting infilling of the townscape gap .
- 29 As demonstrated by the drawings attached to this report at **Appendix 5**, the Development cannot be feasibly altered to avoid right of light infringements. If the Development does not proceed, the benefits identified above will not be delivered.
- 30 In relation to the benefits outlined at (i) and (ii), 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.
- 31 The provision of the benefits identified in (iii) flow from the comprehensive redevelopment of the site, and will not be delivered without the Development.
- 32 The provision of the benefits identified in (iii), (iv) and (v) above flow from ensuring that the Development programme is not delayed as a result of rights of light issues. It would be detrimental to the rejuvenation of the area if the Site remains vacant and undeveloped for any considerable period of time after the Crossrail station opens.

Are the public benefits proportionate to the interference

- 33 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 Crichton 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 Site should be acquired for planning purposes in order to engage the provisions of section 237.

- 34 Human Rights issues arise in respect of the proposed arrangements. An acquiring authority should be sure that the purposes for which the 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 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.
- 35 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 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".
- 36 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.
- 37 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 their right for private and family life and home 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.
- 38 The public benefits arising from the Development are set out and the public interest is demonstrated in this report (in particular in paragraphs
- 39 The planning implications of the Development have been fully considered (see paragraphs 1-4). The Development has been deemed acceptable: planning permission has been granted.

Legal Implications

- 40 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
- 41 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.
- 42 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.
- 43 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 23 to 28 above.
- 44 If land is acquired by a local authority for planning purposes, S237 provides that the construction or carrying out or maintenance of any building or work on that land, whether done by the local authority or a by a person deriving title under them, is authorised notwithstanding that it involves interference with an interest or right to which S237 applies. Such interests include rights to light. Where interference with rights is authorised, compensation is payable. Such compensation is based upon the diminution in value of the dominant owner's interest.
- 45 The City Corporation would have power to dispose of an interest in land acquired by agreement under S227 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 development itself. A site 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.

- 46 The land is owned by LS 21 Moorfields Limited from whom title would be acquired and to whom title would be transferred back following completion

Financial and Risk Implications

- 47 In implementing S237 arrangements and disposing of any interest acquired under S227 back to the Owners, the City Corporation will need to be satisfied that the Owners are in a position to progress the Development in a reasonable period. 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 Tribunal (the Upper Tribunal (Lands Chamber)) would need to be met by the Owners.
- 48 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 and expenses and compensation liabilities, however, the precise terms have yet to be agreed. The Indemnity would also include assurance that all offers of compensation made to date will be honoured by the Owners

Consultees

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

Conclusions

- 50 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 S237 of the Town and Country Planning Act 1990 (TCPA) should be approved on the following basis.
- The Redevelopment Site is partly vacant and demolished and will be fully vacant, demolished and hoarded by December 2016. It is considered desirable for the Development to progress and be completed as soon as possible, in particular to secure: the provision of public realm; productive use of a largely vacant site, provision of development above the buildings demolished for Crossrail works, thereby filling an unsightly and wasteful townscape gap around and above a key transport node, and significant employment generation in immediate proximity to a new Crossrail interchange.
 - The Development would also realise the potential for rejuvenation of the area. It would be detrimental to the rejuvenation of the area if the site remains vacant and undeveloped for any considerable period of time after the Crossrail station opens.

- 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;
- The Development will secure benefits to the area in terms of the appearance of the new building and improved public realm;
- All the Considerations set out in paragraph 10 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. Subject to the Town Clerk being satisfied that: those entitled to the Rights of Light are not prepared to relinquish those rights by agreement (on reasonable terms and within a reasonable time in the light of the Owner's programme to achieve practical completion with the minimum delay after Crossrail's opening at Moorgate);
- If the Town Clerk is so satisfied, it will be necessary to acquire the Redevelopment Site so as to authorise interference with rights of light, and that in the absence of such acquisition those entitled to the rights of light are likely to seek to enforce those rights by injunction and thereby prevent or delay the Development from being carried out.
- Those with rights of light that are infringed will be entitled to compensation.

Background papers Report to Planning and Transportation Committee 17 March 2015

Appendices:

- 1. Site Plan**
- 2. Image of Development**
- 3. List of affected properties**
- 4. Extract of 17 March 2015 P&T report paras 115-145 (Daylight/sunlight)**
- 5. Cut back drawing**
- 6. Owner's request to use S.237**

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