

Committee: Planning and Transportation Committee	Date: 5 April 2016
Subject: Redevelopment of 22 Bishopsgate - 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 TCPA ("S237") to facilitate the carrying out of redevelopment at 22 Bishopsgate ("the Site") (shown edged bold on the plan at **Appendix 1**). The report summarises the approach adopted by Court of Common Council in June 2011 when it considered how to deal with requests to engage S237.
2. The City Corporation resolved to grant planning permission for a scheme ("The Development") for the Site on 17 November 2015 under reference 15/00764/FULEIA. The Owners have advised that there is a significant threat to progressing the scheme. There is an early need to place substantial pre-construction orders for materials and procure the main build contract in order to complete by March 2019 to meet projected demand during 2018/19. There are a large number of affected owners who have rights of light interests and may wish to maintain actionable claims. There is therefore concern that the development programme is at risk due to the inability to settle remaining rights of light claims with the prospect that those with relevant interests 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 Site, and the City's compensation liabilities to be indemnified by the Owners.
4. A report was prepared for the March committee cycle but withdrawn following representations from an affected owner. This report has been updated and considers the representations.

Recommendations

5. It is recommended that Planning and Transportation Committee and Policy and Resources Committee resolve in principle to 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, and that the final decision to acquire be delegated to the Town Clerk, and be subject to him 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.

Main Report

Background

- 1 The City Corporation resolved to grant planning permission under reference 15/00764/FULEIA for redevelopment of 22 Bishopsgate (“the Site”) on 17 November 2015, subject to a Section 106 Agreement. The planning permission relates to the site of the previously approved 63 storey 'Pinnacle' scheme (304.9m AOD) which was implemented by the construction of basements up to ground floor slab level together with a 9 storey core.
- 2 The planning permission which the City Corporation resolved to grant on 17 November 2015 under reference 15/00764/FULEIA is also for a tower comprising 62 storeys above ground (294.94m AOD) with 3 basements (“the Development”). The building would similarly be the tallest in the City and the focal point of the Eastern Cluster. The building would provide a gross floor area of 200,714 sq.m (gea), comprising:-
 - Offices (188,875 sq.m);
 - Retail (553 sq.m Class A1/A2)) at ground level;
 - A viewing gallery with free public access at levels 58 and 58M (mezzanine) (4900 sq.m) (sui generis);
 - A public restaurant and bar at levels 59, 60 and part 61 (5485 sq.m) (Class A3/A4);

- A new covered publicly accessible east-west pedestrian route through the site linking Bishopsgate to Crosby Square and Undershaft.

An image of the Development is at **Appendix 2**.

- 3 As set out in the Chief Planning Officer's report to the Planning and Transportation Committee of 17 November 2015, the proposal was considered to be in substantial compliance with the policies that relate to it, would provide a significant increase in high quality flexible office accommodation particularly within the Eastern Cluster and in particular would support the strategic objective of the City Corporation to promote the City as the leading international financial and business centre. The public realm benefits and free public viewing gallery are also benefits of this major development.
- 4 The scheme provides an employment led mixed-use development that would provide an increase in high quality flexible floorspace.
- 5 The Site is located on the east side of Bishopsgate and is bounded by Bishopsgate to the west, 42-44 Bishopsgate and Great St Helen's to the north, Undershaft and the building at 1 Great St Helen's to the east and 6-8 Bishopsgate to the south. It includes Crosby Square, an area of public highway accessed from Great St Helen's and by steps from Undershaft. The Site was previously occupied by Crosby Court (38 Bishopsgate), 22-24 Bishopsgate and 4 Crosby Square. These were demolished and works began to implement the "Pinnacle" scheme in 2007. Foundations, three basements and the first 9 floors of the core were built before construction stopped in early 2012. The hoarded site has remained in this condition since then. A small part of the site falls within the St Helen's Place Conservation Area.
- 6 The Development, whilst larger than the approved tower, is 10m lower and would provide 30% more floorspace (50,880sq.m.), maximising the Site's potential. The building has been designed to achieve an inclusive environment throughout, and designed to accommodate future workstyles. For example, the floor above the double height reception lobby would be occupied as a shared space for building occupiers, offering ancillary services to office tenants and their guests, providing for example food outlets, ancillary retail, and spaces for lectures, events and informal performances. Although not available to the public, the space would provide a range of services within the building for tenants and when viewed from outside the building would provide a visual vibrancy to the base in street level views. The applicants advise that *"the amenity areas in the building are an important ingredient in achieving the kind of working environments capable of attracting good tenants and the most promising employees. They are also key in delivering the first WELL accredited building in the UK. We are therefore committed to deliver 1835 sq.m of amenity space within the building"* (likely to be on levels 2, 7, 25 and 41.) This is in addition to the public space provision: the public viewing gallery, restaurant and bar at the top of the building.

Proposal

- 7 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
- 8 Right of light are easements enjoyed by building owners (“Affected Owners”) over neighbouring land whereby a right to obtain light through apertures in the Affected Owner’s building is acquired over nearby land in different ownership. As referred to in the letter at Appendix 3, the general rule is that interference with a right of light which gives rise to a degree of harm may be prevented by injunction.
- 9 The way in which the injunction risk can be overcome is by using a mechanism contained in S237, involving acquisition of an interest in the Site by the City Corporation, the operation of which is described in the Legal Implications section of this report. In June 2011, following a case which increased the risks of construction being prevented by injunction where rights of light were infringed, Court of Common Council considered the use of the S237 mechanism. It resolved that, in appropriate cases, use of the powers could be considered where this would assist delivery of developments which achieve public benefit. The applicable tests and relevant criteria were set out, and they are applied in the evaluation set out in this report.
- 10 The Owners have asked if the City Corporation would be prepared to consider acquiring an interest in the 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 Development. The Owners’ request is annexed at **Appendix 3**. The Owners have also written to the Affected Owners advising them that the request is being considered by the City Corporation.

Considerations

- 11 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 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 part of the Site is situated in the St Helen’s Place Conservation Area, when deciding whether to exercise its power to acquire the 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

- 12 The impact of the Development on the adjoining properties has been assessed by Rights of Light surveyors retained by the Owner. The surveyors have also had recourse to the rights of light analysis carried out in relation to the then proposed Pinnacle development where 61 properties would have been adversely affected. In respect of that scheme, deeds of release were successfully negotiated between 2005 and 2008 with seven property owners in the immediate vicinity of the Site in relation to the right of light impact of that development on their properties. Although that development had a different massing profile to the Development the view of the surveyors is that (with one exception) the same number of rights of light owners would be affected by the current proposed development. The exception is 40 Leadenhall Street, which would not have suffered injunctable loss from the Pinnacle scheme. Based on the Owner’s advice, they would need to settle claims in respect of 53 properties if they were proceeding with the previous Pinnacle scheme. To proceed with the Development, they need to settle claims in respect of 61 properties (involving 90 different legal interests). The difference is due to the seven previously negotiated Rights of Light Deeds (which do not apply to the new Development), and 40 Threadneedle Street. The affected properties with potentially injunctable rights are listed in **Appendix 4**.
- 13 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 elimination of that risk. The Owners contacted all the affected freehold owners with potentially injunctable interests between March and April 2015. 98% [47 out of 48] of the freeholders have appointed a rights of light surveyor and the Owners’ surveyors have been in negotiations with all of them. The surveyors

confirm they have been in touch with all 42 leasehold interests. Technical information has been sent out to 84% of the interests [i.e. 47 out of 48 freeholders and 35 out of 42 leaseholders]. Offers of compensation have been issued to 80% i.e. 45 out of 48 freeholders and 35 out of 42 leaseholders].

- 14 As regards the impacts in planning terms, issues of daylight sunlight and overshadowing were fully considered when the committee resolved to approve the Development in 2015. Concerns raised on the impacts of sunlight and daylight were considered. The Chief Planning Officer advised that as a consequence of such large scale development there would be some adverse environmental impacts in terms of daylight and sunlight and overshadowing to surrounding areas but that the impact would not be noticeably worse than would have been caused by the 'Pinnacle' scheme. It was not considered that the impacts would cause unacceptable harm to daylight and sunlight levels to the majority of those properties identified as sensitive and the impact on residential properties would be acceptable. There would be instances of minor to moderate adverse effects to some non-residential buildings caused by the proximity of the buildings to the development site. The Chief Planning Officer concluded that this is not uncommon in a densely developed area such as the City where a number of properties experience daylight and sunlight levels below recommended BRE Guidelines. An extract from the 17 November 2015 Committee report evaluating the daylight/sunlight impacts is annexed at **Appendix 5.**

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

- 15 Despite their efforts the surveyors report that 19% [i.e. only 11 out of 48 freehold interests and 6 out of 42 leasehold interests] have agreed heads of terms for release of their right of light. In a number of cases only extremely limited and/or very slow progress has been made. The Owners have indicated that they will continue to negotiate, but that the ability to enforce interference with rights to light by injunction poses a significant threat to the ability to progress the scheme. The Owners identify three main reasons why the threat of injunctive relief threatens their ability to proceed with the scheme. (a) the need to place substantial pre-construction orders for materials; (b) the very large numbers of parties who may wish to bring claims yet display no serious intention to negotiate deeds of release; and (c) the risk that there may be unknown dominant owners who could seek an injunction at some later date. The Owners consider that there is considerable uncertainty as to whether they would be able to conclude negotiations and enter binding deeds of release with all affected owners in time to enable the works programme to commence in April 2016 that would facilitate completion of the development by January 2019. All settlements reached to date would be honoured by the Owner, and in other cases appropriate offers of compensation would have to be made. This would be secured in the Indemnity required by the City prior to proceeding with any acquisition. Affected Owners could also refer the level of compensation to the Lands Chamber.

- 16 The surveyors are also concerned that despite their due diligence other as yet unascertained interests may arise with the potential to injunct in relation to the Development.
- 17 The Owners have advised that it is not possible to make 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.
- 18 In this regard, the cutback drawings have been prepared to show the extent of the changes that will need to be made to prevent or reduce infringement on properties with potential injunctable rights. These demonstrate 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. A cutback drawing showing the changes required to remove all infringements is at **Appendix 6**. In terms of design and viability, interference with rights of light is therefore necessary to facilitate the carrying out of the Development.
- 19 In deciding whether it is necessary to acquire an interest in land under S227 so as to be able 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.
- 20 The following matters are considered relevant:
 - 20.1 The Owners advise that the development programme is geared towards an April 2016 start of the main build programme for the superstructure. This is premised on finalising commitments to large build packages (for lifts, M&E, concrete and steel) in the order of £300M at the end of March. The timing aims to ensure completion to meet projected office demand during 2018/19. However, the Owner states investors have made it clear that full financial commitments will not be provided while there are injunction risks. A delay in investor commitment will impact the programme and prejudice the target completion date.
 - 20.2 It is highly unlikely that agreement would be reached with all Affected Owners in a timeframe that allows the Owners to progress the Development in accordance with the development programme. Work is currently proceeding to modify the existing portions of the Pinnacle structure, and the programme envisages that this will progress seamlessly to the construction phase without need to vacate the construction site again. Given the extensive period during which the site has been under construction or left in abeyance, the Owner hopes to achieve continued progress so that the Site can be brought into use by 2019 and the long standing construction impacts brought to an end as soon as possible.
 - 20.3 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 meet the strategic need to provide prime office floor space to meet the predicted demand, the programme for 22 Bishopsgate would need to achieve practical completion in 2019.

- 20.4 Deeds of release would need to be in place with all the adjoining owners with injunctable interests in time for the development to proceed. Given the uncertainties of this, the Owners will need to have the statutory acquisition process engaged promptly.
- 21 Having regard to the matters specified at paragraph 20 above, the necessary funding will not be secured until the rights of light issue is settled and there is certainty that the scheme can be delivered without risk of injunction. It is highly unlikely agreement would be reached with all 94 Affected Owners in a timeframe that enables the Development to be carried out for 2019 completion. Therefore, without S237 being engaged, the Development could be inhibited. It is not considered to be in the public interest for the Site to remain in its current partially constructed condition whereby it cannot be beneficially used or occupied. In addition, given the predicted demand for floorspace, it would be in the public interest for the building to be ready for occupation in 2019. It is necessary to engage section 237 to authorise interference with rights in order to facilitate the carrying out of the proposed development of the Site.

Whether acquisition will facilitate the carrying out of the development

- 22 The City Corporation have resolved to grant planning permission for the Development subject to the land owner/s 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.
- 23 The expected programme for the Development is outlined at paragraph 20 above.
- 24 However, the Development cannot be carried out unless all Affected Owners agree to infringements (or the infringements are authorised by S237). If agreements can be reached imminently the arrangements proposed in this report will not be necessary. However, given that the commercial interests of a large number of Affected Owners could be diametrically contrary to prompt settlement, there is significant uncertainty as to whether the necessary agreements can be reached. If the Site is acquired so as to engage S237 the Owner will have sufficient confidence to obtain funding and to proceed; as a result the acquisition by the City 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.**

- 25 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 flexible floorspace. It would provide public realm benefits, most particularly the free public viewing gallery. The Development is considered to be in substantial compliance with policies.
- 26 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
- 27 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.

28 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.”

29 The key benefits of the Development are summarised in paragraph 3 to 6 and in addition the Development also secures a planning obligation package together with a contribution to Crossrail.

30 In conclusion, the use of S227 to enable the operation of 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 an unused site, and significant employment generation in immediate proximity good transport nodes).

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

31 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 occupiers and/or small businesses and support accommodation and including retail to provide support services to the workforce in the area;
- ii) the provision of around 188,875 sq.m of high quality office space comprising regular flexible floorpsace including internal amenity space and enabling projected employment generation of about 11,568 office workers;
- iii) the provision of public realm improvements and the public viewing gallery, in addition to the new covered publicly accessible east-west pedestrian route through the Redevelopment Site linking Bishopsgate to Crosby Square and Undershaft.;
- iv) the productive use of an unused Site;

32 As demonstrated by the drawings attached to this report at **Appendix 6**, 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.

33 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. The provision of the benefits identified in (iii) will not be delivered without the Development.

- 34 In the case of the infringements to 40 Leadenhall Street, these could be avoided by implementation of the earlier Pinnacle proposal instead of the Development. However, the significant additional floorspace achieved by the Development, in the order of 30% more than the Pinnacle, is considered to justify the additional infringement. The benefits to be derived from the Development could not be achieved without giving rise to all of the infringements.

Are the public benefits proportionate to the interference

- 35 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 Site should be acquired for planning purposes in order to engage the provisions of section 237.
- 36 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.
- 37 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 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”.

- 38 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.
- 39 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.
- 40 The public benefits arising from the Development are set out and the public interest is demonstrated in this report (in particular in paragraphs 24 - 33.
- 41 The planning implications of the Development have been fully considered (see paragraph 3. The Development has been deemed acceptable: planning permission was resolved to be granted by the City Corporation with the support of the Mayor.

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

- 42 When considering the application for planning permission for the Development at its meeting held on 15th December 2015 the Planning and Transportation Committee accepted the City Planning Officer's recommendation. The City Planning Officer advised that the proposed tower (especially in view of the consented Pinnacle tower on this site) would not harm the character and appearance of the St Helen's Place Conservation Area or its significance. It remains the view of the City Planning Officer that the proposed development would preserve the character and appearance of the St Helen's Place 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

Representations

- 43 Following publication of the (subsequently withdrawn) report for the March committee cycle, an Affected Owner with numerous interests in affected properties wrote to the City Corporation objecting to and challenging the legality of engaging S237 (see letter at **Appendix 7**). The representations refer to the severe impacts of the right of light infringements, the lack of consultation about engaging S237, and the concern that use of S237 is inappropriate and

premature. The report was withdrawn from the March committee cycle to enable the representations to be carefully considered. Updated information has been obtained from the Owners about alternative forms of building and the programme. Following that process the recommendations are considered appropriate for the reasons set out in this report. The Affected Owner has also expressed concerns that the account given to the City Corporation regarding the progress of negotiations is inaccurate. However, the need to engage S237 in this case is considered to arise from the large number of Affected Owners with whom negotiations have taken place but no agreement has been reached (together with the public interest in prompt delivery of the scheme, and the programme in place to achieve that), rather than due to any issues regarding progress of negotiations with any particular Affected Owner. In its extensive Rights of Light report (December 2014) the Law Commission acknowledged in its review of development practice that “a neighbour may refuse to engage, preferring to sit back in the knowledge that the closer the commencement of the development, the stronger his or her bargaining position.” The risks of this recognised practice adversely affecting timely delivery inevitably increase with the number of Affected Owners, however swiftly any individual negotiations may progress. In this case use of S237 is considered appropriate due to the risks arising from the fact that there are a large numbers of Affected Owners with whom negotiations have taken place, but agreement has not be reached. The public interest is in works on this long standing construction site progressing so that the land can be brought into beneficial use and the surrounding public realm enhancements delivered without undue delay. It is the view of officers that, given that negotiations which have been undertaken with Affected Owners, and given that there are a large number of interests where agreement has not be reached, the conclusion to be reached is that absent engagement of section 237, the development is unlikely to proceed, and certainly will not proceed within the timescale contemplated.

Legal Implications

- 44 The City Corporation may acquire an interest in the Site by agreement under S227 TCPA. Such acquisition must be for a reason for which land can be compulsorily acquired under S226 TCPA. The purposes for which land may be acquired are defined in Section 226(1) as follows:
- (a) 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
 - (b) 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
- 45 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.
- 46 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.

- 47 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 to 24 - 33 above.
- 48 The City Corporation would have power to dispose of the interest 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 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.

Financial and Risk Implications

- 49 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 commence and complete 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.
- 50 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

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

Conclusions

- 52 It is considered that the acquisition of the Site for the planning purposes of the Development so as to engage the provisions of S237 TCPA should be approved on the following basis.

- The Site is the site of the former consented Pinnacle development in respect of which planning permission has been implemented and is extant. Similar to the Pinnacle, the proposed development would be the tallest building in the City and the focal point of the Eastern Cluster, providing a significant increase in flexible office accommodation and supporting the strategic objective of the Corporation to promote the City as the leading international financial and business centre. It is considered desirable for the Development to progress and be completed as soon as possible;
- 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;
- It is considered that, given the negotiations which have been conducted to date, the number of interests concerned, the conclusion to be reached is that agreements on reasonable terms without all those entitled to rights to light cannot be achieved within a reasonable time. The Recommendation proposes that acquisition be agreed, subject to there being a suitable indemnity in place and terms relating to acquisition and disposal being agreed;
- Those with rights of light that are infringed will be entitled to compensation;
- All the Considerations set out in paragraph 11 have been properly addressed and on balance the outcome of these Considerations supports the Recommendations.

**Background papers: Report on Planning Application to 17 November 2015
 Planning and Transportation Committee, Report to Court of Common Council
 on use of S237 9 June 2011, Cash Flow and Procurement Tracker March 2016.**

Appendices:

- 1. Site Plan**
- 2. Image of Development**
- 3. Owner's request to use S.237**
- 4. List of affected properties**
- 5. Extract of 17 November 2015 P&T report paras 288-302 (Daylight/sunlight)**
- 6. Cut back drawing**
- 7. Representations from Affected Owner.**

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