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Date: 7 March 2016
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By Email and Post

URGENT

Dear Sirs

Sections 227 and 237 of the Town and Country Planning Act 1990 ("section 227" and "section 237" and the "1990 Act") and 22 Bishopsgate Development (the "Development")

We act on behalf of The Wardens and Society of the Mistery or Art of the Leathersellers of the City of London. As you are aware, our client owns a number of substantial property holdings in and around St Helen's Place, including the following freehold interests within the immediate vicinity of the Development at:

- 3, 5, 6, 7, 15, 16 and 17 St Helen's Place;
- 33 Great St Helens;
- 12/20 Camomile Street;
- 25-51 and 61 St Mary Axe;
- 52-68 and 88 Bishopsgate.

As a substantial adjoining land owner, our client's rights to light will, on any basis, be severely impacted as a result of the Development. We understand from the Agenda published on the Corporation of London's website that the Corporation, at a meeting to be held on 10 March 2016, will consider making a resolution to acquire the land which is the subject matter of the Development pursuant to section 227 of the Town and Country Planning Act 1990. Because the appropriate procedure has not been followed, we understand that this would just be an approval "in principle" although please confirm urgently. As we understand it, the Planning and Transport Committee is not even authorised to recommend the acquisition of land for planning purposes by agreement under section 227, let alone make any decision at this stage.

Our client believes that any decision by the Corporation to acquire the land pursuant to section 227 and override our client's property rights pursuant to section 237 would be wholly premature, some 3 months after the resolution to grant planning permission for the Development (but before formal consent has even been given) and before our client has received from its advisors their full report on its rights to light, let alone had any opportunity to discuss matters with the Developer.

Our client believes that the Corporation, upon considering the matters set out below, should postpone any decision at its meeting on 10 March 2016. To do otherwise would, in our opinion, leave the Corporation entirely exposed to a justified claim in judicial review. As you are aware, the Corporation must act fairly in considering all relevant factors and otherwise in exercising its powers. We are extremely surprised to note that there has been no consultation whatsoever with our clients. It was only this week that our client was made

aware of this week's meeting. Accordingly, it has had to seek urgent advice as to its rights to challenge any decision, which are fully reserved.

Negotiations with the Developer

We set out below the reasons why any resolution to acquire land now would be unlawful and unfair to our client. First, we explain the chronology of events to correct the inaccurate and misleading account given to you of the progress that has been made with adjoining owners.

- In March 2015, the Developer first notified our client in very broad terms that a new scheme was being considered but no detail was given whatsoever. Please note this is in the context of previous approaches in respect of several failed schemes for this site.

- A letter was apparently sent on 31 March 2015 but it did not actually reach our client until 16 April 2016, when it was emailed by Jessica Rhodes of GIA on behalf of the Developer.

- A meeting between GIA and Mr Absolon took place on 28 April 2015, but he was not formally appointed at that stage.

- On 30 July 2015, our client wrote to Mr Absolon expressing its desire to understand more about the Development and the likely impact on their rights. On the same date, Mr Absolon informed our client that GIA had yet to provide him with any detailed information about the scheme, let alone the development model.

- In August 2015, Mr Absolon enquired of the Developer when detailed information would be received. Some information was sent to Mr Absolon on 2 September 2015.

- On 22 September 2015, there was a meeting between the parties' rights to light surveyors at which Mr Absolon asked for the Developer's legal analysis of our client's rights.

- The summary legal analysis was received on 2 October 2015 which set out basic details of the titles which were likely to be affected. Mr Absolon formally wrote back to GIA requesting an undertaking to pay GVA's and this firm's fees in the usual way.

- On 8 October, SSL architects and Sir Stuart Lipton presented details of the scheme for the first time.

- The requisite undertakings were received from the Developer's legal advisers in late October 2015, following which we commenced the task of reviewing the relevant titles and the rights to light enjoyed by our client at St Helen's Place, the Development model, checking its accuracy and carrying out internal inspections and measurements to assess the likely impact of the Development on those rights.

- On 25 November 2015, we wrote to the Developer's legal advisers asking that a further undertaking for our fees be provided in order to enable us to complete the review of our client's rights and advise our client fully on the likely impact. To date we have yet to receive the full undertaking that we requested in November 2015.

Our client owns 45 separate property interests which are likely to be substantially affected. That is **50%** of the total interests reported as being affected at paragraph 16 of Agenda item 8c, page 120.

Each interest has a number of affected windows and rooms – there are likely to be well over 100 substantially affected but we have not confirmed that yet, given we are still in the review process.

The review task has been substantial. Our client has not, to date, even been fully advised of its rights to light, the potential impact of the Development on these rights or any remedies in light of any infringements of these rights and we have been unable to provide this advice as we are yet to receive the requested undertaking.

Save as set out above, no further discussions or correspondence regarding the Development and its impact has taken place between the parties' respective advisers. It hardly suggests that the Developer is under any time pressure. Indeed we note that "*as yet unascertained interests*" are cited as a serious consideration for acquiring rights compulsorily (paragraph 16 of Agenda item 8c, page 120). Accordingly, the general account given to you of the progress that has been made with adjoining owners, such as our client, is inaccurate.

Reason for Compulsory Acquisition

The only real reason cited by the Developer for this compulsory acquisition is because it is impatient with having to negotiate sensibly to respect adjoining owners property rights because it is "*finalising its commitments to large build packages*" (paragraph 20.1 of Agenda item 8c, page 121). It is entirely within the Developer's control as to whether it commits to these contracts and, in our submission, it should certainly not be the reason for compulsory acquisition of rights. That clearly puts the cart before the horse.

Whether the Developer finalises agreements with parties with property rights which will be substantially infringed "*in a timeframe that allows the [Developer] to progress the development in accordance with the development programme*" is not a good reason compulsorily to acquire rights at all. Indeed if that really was a good reason for infringing property rights, developers would use it every time.

Not only is our client unaware as to the extent of infringement of its rights, it has also not even had an opportunity sensibly to explore with the Developer the possibility of negotiating any form of compromise. That must take place before any rights are overridden.

Our client considers that the Developer's decision to approach the Corporation to instigate its s237 powers is entirely precipitous and is simply designed to maximise its profits.

To have our client's rights compulsorily acquired (or even a resolution to do so by the Corporation) without any meaningful consultation would not only be inappropriate but also infringe its rights pursuant to the Human Rights Act 1998. In ***R (Derwent) v. Trafford Borough Council*** **[2009] EWHC 1337 (Admin)** at paragraph 52, the judge described it as "probably unarguable" that the use of section 237 would constitute a breach of an adjoining owner's human rights. In this case, if such an acquisition takes place, Article 1 and Article 8 rights would be engaged. Using compulsory purchase powers at this stage comes no-way near to striking a fair balance between our client's rights and that of a developer, who stands to make hundreds of millions of pounds as a result of this scheme.

Summary and Next Steps

We hope that the Corporation will note the history of this case and agree with our client's view that, at this stage, 3 months after the resolution to grant of planning permission (and before permission has even been given), there is no public justification for the Corporation to engage its powers under sections 227 and 237 and, in any event, it would be unlawful to do so.

Paragraph 24 of the Memorandum to Circular 06/04 advises:

> *"The compulsory purchase of land is intended as a last resort"*

It cannot seriously be said to be something that must happen as a last resort at this stage. We note that only 11 out of 48 freehold interests and 6 out of 42 leasehold interests have entered into deeds of release. We would submit that this is no surprise whatsoever if the Developer has dealt with other land owners in the same way as our client.

We have considered Herbert Smith Freehills' letter of the 18 January 2016 carefully and in particular the paragraph headed "Strategy and Progress to Date" (see Appendix 3 to the Report to the Planning Committee dated 10 March 2016). Herbert Smith state that "*active negotiations have unfolded*". No such negotiations have unfolded with our clients at all. There is therefore a real danger that the Planning Committee is being misled.

In the case of rights of light, before considering appropriation a local authority should identify all those with rights which would be infringed if the development contemplated was carried out, and seek to secure releases of those rights by negotiation. That has simply not happened, or come anywhere near to happening.

In summary:

1. Our client's rights of light will, on any basis, be severely impacted by the carrying out of the Development – these rights constitute 50% of all the rights which are being infringed;

2. No consultation with our client regarding the impact of the Development on its rights has been carried out;

3. The engagement, at this stage, of the Corporation's powers under sections 227 and 237 is in our view wholly inappropriate and premature;

4. Since November 2015, our client has been awaiting an undertaking on costs so that we may advise them fully of their rights. We suspect this has not been forthcoming because the Developer thought it did not need to and could simply override our client's rights by your engagement of sections 227 and 237; and

5. Our client expressly reserves all its rights until it has been fully advised on how the Development will impact on its existing rights to light.

We should add that our client fully understands the Developer's desire to commence the Development and will be prepared to see whether, how and if their rights should be impaired by a process of consultation and negotiation in the usual way.

Freedom of Information Act 2000 ("FOIA")

Please note that our client is in the process of making a request pursuant to the FOIA for the Corporation to provide all relevant information provided by the Developer in asking the Corporation to consider acquiring the Development site pursuant to sections 227 and 237.

We request that the Corporation should take no steps to utilise or consider the utilisation of its powers under sections 227 and 237 at its meeting on 10 March 2016 until the Developer and the Corporation have properly and fully engaged with our client.

Yours faithfully

Eversheds LLP

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cc/ Nabarro and Herbert Smith – solicitors for the Developer