



## Planning and Transportation Committee

**Date:** TUESDAY, 5 APRIL 2016  
**Time:** 10.30 am  
**Venue:** LIVERY HALL - GUILDHALL

### 6. REPORTS RELATIVE TO PLANNING APPLICATIONS

a) 22 Bishopsgate (Pages 1 - 32) **For Decision**

Item received too late for circulation in conjunction with the Agenda.

**John Barradell**  
**Town Clerk and Chief Executive**

This page is intentionally left blank

<b>Committee:</b> Planning and Transportation Committee	<b>Date:</b> 5 April 2016
<b>Subject:</b> Redevelopment of 22 Bishopsgate - Potential Acquisition of Land for Planning Purposes	<b>Public</b>
<b>Report of:</b> Chief Planning Officer and Comptroller and City Solicitor	<b>For Decision</b>
<b>Report authors:</b> Annie Hampson: Tel 020 7332 7000 Deborah Cluett : Tel 020 7332 1677	

## 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 floorspace 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 15<sup>th</sup> December 2015 the Planning and Transportation Committee accepted the City Planning Officer's recommendation. The City Planning Officer advised that the 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.

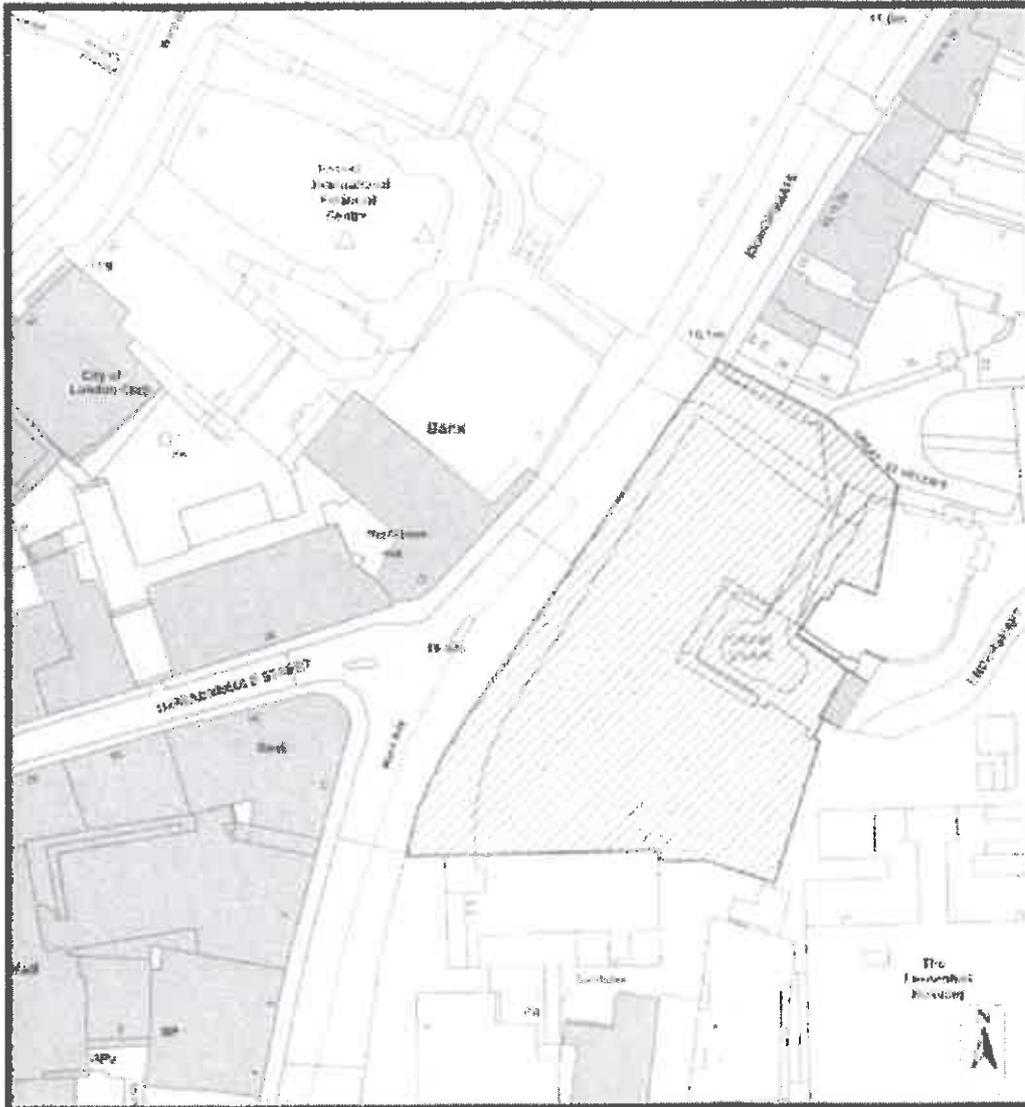
**Background papers: Report on Planning Application to 17 November 2015  
 Planning and Transportation Committee, Report to Court of Common Council  
 on use of S237 9 June 2011, Cash Flow and Procurement Tracker March 2016.**

**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.**

**Contact:** Deborah Cluett, Assistant City Solicitor tel: 0207 332 1677 email: Deborah.cluett@cityoflondon.gov.uk

# Site Location Plan



Copyright © 2011 Ordnance Survey. All rights reserved. Ordnance Survey consent is given for this information to be reproduced for personal or internal use only. The copyright in this information remains the property of Ordnance Survey.

ADDRESS

100 Bishopsgate

-  SITE LOCATION
-  LISTED BUILDINGS
-  CONSERVATION AREA BOUNDARY

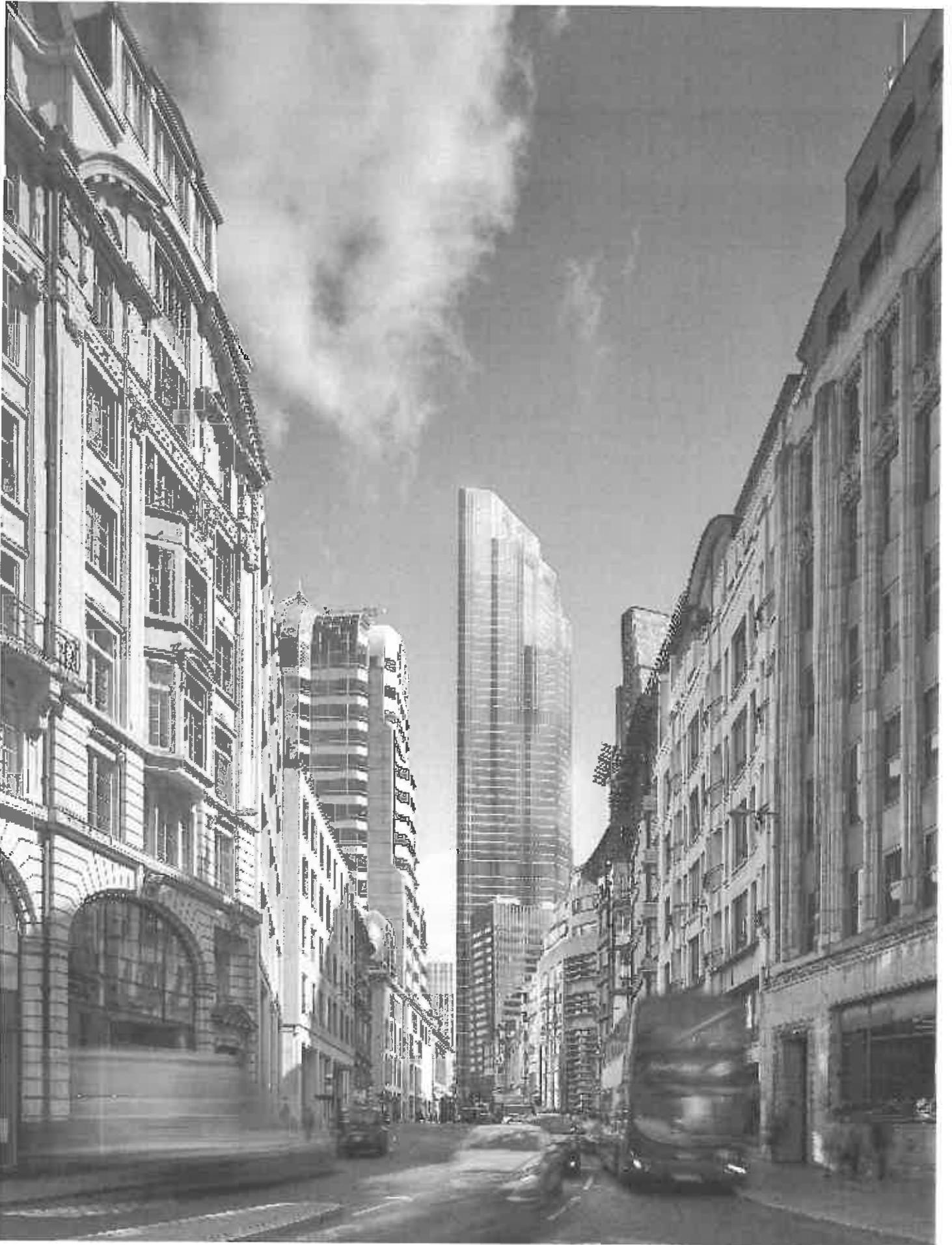
CASE 100  
100/074/05/01/01



**CITY  
LONDON**

DEPARTMENT OF THE  
PLANNING

APPENDIX 2





HERBERT  
SMITH  
FREEHILLS

APPENDIX 3

The City Surveyor  
City of London Corporation  
Guildhall  
Basingall Street  
London  
EC2V 7HH

For the attention of Simon McGinn

Herbert Smith Freehills LLP  
Exchange House  
Primrose Street  
London EC2A 2EG  
T +44 (0)20 7374 8000  
F +44 (0)20 7098 5129  
D +44 (0)20 7466 2129  
DX28 London Chancery Lane  
E [patrick.robinson@hsf.com](mailto:patrick.robinson@hsf.com)  
[www.herbertsmithfreehills.com](http://www.herbertsmithfreehills.com)

Our ref  
2129/30968307  
Your ref

Date  
18 January 2016

Dear Sirs

**Commercial in Confidence**

**The Redevelopment of 22 Bishopsgate**

#### **INTRODUCTION**

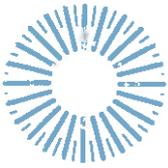
GIA have been instructed by 22 Bishopsgate Limited Partnership to not only advise upon the rights of light impacts arising from the proposed scheme for the above site but also the potential compensation budgets where actionable injuries occur. The scheme referred to in this letter is the development proposal comprised in planning application Ref No: 15/00764/FULEIA, which secured a resolution to grant planning permission at the meeting of the Corporation's Planning and Transportation Committee held on 17 November 2015, and now has clearance from the Mayor's Stage 2 Report dated 8 December 2015.

The measurement of light diminution or loss, and the law and practice which have built up around rights to light is a very complex and technical area. It often raises sensitivities and risk regarding the establishment of development potential. In relation to the 22 Bishopsgate redevelopment, GIA undertook a full comprehensive technical assessment in order to establish and understand the potential reduction in light created as a result of the implementation of the proposal. This analysis was initially completed on assumed layouts and was updated thereafter on a property by property basis once the internal surveys have been completed.

Based on the initial technical analysis, GIA identified 61 properties (as listed under Appendix 1) which were considered to experience injunctable or potentially actionable alterations in light following successful implementation of the proposed scheme. A total number of 492 interests were identified to begin with within those properties. Following an extensive legal and technical due diligence exercise, this figure was reduced significantly down to 94 legal interests as a result of the "Bad Lease, Bad Window" test which established whether specific leaseholders enjoy a Right of Light within a property and whether the demise they occupy is impacted upon by the proposed development. Please note that the total number of active negotiations is based mainly on the

Herbert Smith Freehills LLP and its subsidiaries and Herbert Smith Freehills, an Australian Partnership, are separate member firms of the international legal practice known as Herbert Smith Freehills.

Herbert Smith Freehills LLP is a limited liability partnership registered in England and Wales with registered number OC310989. It is authorised and regulated by the Solicitors' Regulation Authority of England and Wales. A list of the members and their professional qualifications is open to inspection at the registered office, Exchange House, Primrose Street, London EC2A 2EG. We use the word partner of Herbert Smith Freehills LLP to refer to a member of Herbert Smith Freehills LLP, or an employee or consultant with equivalent standing and qualifications.



accuracy of information obtained from Land Registry, thus this number is subject to change upon receipt of up to date tenancy schedule from particular interests.

For the avoidance of doubt, an actionable loss of light is considered to arise when a well-lit room, i.e. lit to over 50% of the area of the subject room on the working plane has the light diminished to less than 50% of the room area; or where a poorly lit room (lit to less than 50% of the room in the existing condition) experience further loss of light that would be considered "noticeable". In these instances, the dominant owner (affected party) could take out an action against the person causing the injury (servient owner) in the Courts. The primary remedy for an interference with an easement is an injunction against the development so as not to interfere with the easement of light. One must also take into account that an injury to a residential property causes more risk of injunction as the Courts will seek to protect a resident owner more than a commercial owner. Fortunately, the affected parties are mainly commercial owners in this instance.

### **RIGHTS TO LIGHT IN PRACTICE**

If the level of light loss is sufficiently serious to warrant an injunction and the injured party wishes to pursue this remedy, particular tactical considerations come to the fore. If, conversely, the matter is likely to be settled by negotiating for a level of compensation in lieu of an injunction (or runs through the litigation process of a full trial to establish the level of damages to be awarded), the debate switches to entirely different tactical considerations and to the different methods of calculating the level of compensation which should be expected.

As is well known, this too, has been a significant area of controversy in recent years, being unavoidably so closely bound in with the injunction versus the damages-only equation. The law in this area is also in a considerable state of flux, which inevitably means that further change is likely, both in decided cases and as market practice continues to evolve to establish levels of compensation and the method on which they are calculated.

### **PINNACLE V 22 BISHOPSGATE**

A comparison exercise was undertaken in order to establish the scale of the impacts of both the Pinnacle scheme and the current 22 Bishopsgate scheme. This analysis demonstrates the similarity in impacts between the Pinnacle scheme and current 22 Bishopsgate scheme.

GIA identified a total of 61 properties that would experience an alteration to the light enjoyed which would constitute an actionable interference to the easement that the surrounding property owners enjoy over the 22 Bishopsgate site. As part of their due diligence, GIA identified a total of seven properties, located in the immediate vicinity of the site, where Deeds of Release that were previously negotiated for the consented Pinnacle scheme. However, these deeds relate to an agreed profile, which in essence was the profile of the Pinnacle scheme and as a consequence, were only helpful to a degree with respect to the current scheme as clearly the current scheme has a different massing profile.

The Pinnacle Deeds of Release were negotiated between 2005/2008, a time which immediately followed the *Midtown Ltd v City Of London Real Property Company Ltd*, 2005 whereby rights of light surveyors were far more bullish in their approach because compensation was deemed to be a more suitable remedy for commercial premises rather than injunction. Since then, and following the *Heaney* case in 2010, surveyors and their clients have been far more risk averse with respect to dealing with actionable losses of light and as such, have increased the scope of their testing to



include properties within a greater radius to a development site. Indeed, in this instance, GIA have assessed properties up to 250 metres away from the site for the 22 Bishopsgate scheme which identified all the possible interests where potentially actionable injuries occurred. This exercise was also undertaken for the vendor of the Pinnacle site, for whom GIA were also advising via a different internal team, and similar injuries were experienced to properties identified within that assessment as for the current 22 Bishopsgate scheme. As such, if the consented Pinnacle scheme were to be implemented and built out, then a similar amount of owners (bar the ones protected by Deeds) would have to be contacted for the implementation to proceed without the risk of injunction from surrounding property owners who suffer an actionable losses of light.

There are very few exceptions between the two schemes and these are noted in the Appendices. You will note in Appendix 1, which sets out the properties affected by the 22 Bishopsgate scheme and the consented Pinnacle scheme, that the risk level for both schemes is almost identical. The risk register has been undertaken to the same point in negotiation as the current 22 Bishopsgate scheme so that a direct and accurate comparison between the two schemes can be made.

In both accounts, the same number of interests would be affected. However, the seven Deeds of Release that have been negotiated in respect of the Pinnacle scheme mean that these seven interests no longer pose an injunctable risk to the development of the 22 Bishopsgate site in respect to rights of light. If it was not for these Deeds in place, not only would we have virtually the same number of interests affected but it would be to the same degree.

The only exception to this, and where there is a difference on the impact is 40 Threadneedle Street. The 22 Bishopsgate scheme extends past the agreed development profile (of the Pinnacle scheme) and therefore this additional massing means that one additional property will have to be approached. Despite the difference in the massing of the two schemes, this is the only additional property that needs to be considered besides those originally identified for the Pinnacle scheme.

In summary, the comparison exercise demonstrates that even if the consented Pinnacle scheme was to be built today, GIA's advice would be to apply the same level of due diligence as applied for 22 Bishopsgate. If the Pinnacle scheme was to be implemented today we would be looking to negotiate settlements with 53 properties as compared to 61 properties for the 22 Bishopsgate scheme. The additional properties that need to be considered for the 22 Bishopsgate scheme are down to the Deeds of release from the Pinnacle scheme and the altered massing.

## **STRATEGY AND PROGRESS TO DATE**

Contact was initiated with all of the affected freeholders which experienced an injunctable or potentially actionable injury between March and April 2015 and active negotiations have unfolded ever since in hope to reach amicable agreements with all parties.

98% of freeholders have appointed a rights of light surveyor to represent them in the matter and GIA have been in discussion with all surveyors. Where legal due diligence has been conducted and upon obtaining tenancy documentations from the freeholders, GIA have also made contact with the affected leasehold interests, once determined that they enjoy a right to light within the property and upon conclusion that their demise will be impacted by the proposed development.

Satisfactory progress has been made with a number of the interests including technical information being issued to 76% of the interests, mainly based on confirmed layouts of the properties following completion of an internal survey. Consequently, offers of compensation were issued to 80% of the interests for consideration by the surveyors and their respective clients.



## **METHODOLOGY**

The offers have been based on a Book Value Calculation, the most common way for calculating appropriate compensation for rights of light. The formula considers the actual loss of light within the neighbouring properties and values the diminution in the value of the property as a result of the loss of light. The loss of light is then capitalised and where a material injury occurs a multiplier/uplift is often applied to that base figure. The formula is illustrated as follows:

Loss of Light (known as the equivalent first zone – EFZ – i.e. the nett loss) x Light Rental Value per square foot x Years Purchase (YP – to value into perpetuity, the YP is derived from the market yield).

In light of the recent Supreme Court decision in *Coventry v Lawrence* (2014) and the recent Law Commission Report, we believe the appropriate method for evaluating any compensation due is by reference to any legal nuisance caused as a result of the reduction in light. Case Law has, in the past, suggested an uplift of between 2.6 and 3 times is appropriate - something reinforced in the very recent *Scott v. Aimiuwu* decision where an uplift of 2.5 was used (a County Court decision which unfortunately does not set legal precedent). Considering this, we have used 3 times uplift for the basis of our offers. As indicated, however, on instructions we have been perfectly willing to explore negotiated settlements on terms somewhat in excess of opening offers; and it is understood that the owner remains committed to continue to negotiate on this basis, which represents a realistic willingness to use all reasonable efforts to resolve positions in a constructive and timely fashion.

An alternative way of calculating compensation sums can be through conducting a cutback analysis of the scheme. This method eliminates the injury to the affected window by removing the area of the proposed building causing the loss. The profit on this area can be calculated and a percentage of that profit can be awarded to the injured party.

Due to the size and nature of the development, and the large number of properties that may potentially be affected around the site, we feel that it would be highly inaccurate to determine a "reasonable" sum this way as most properties would benefit from the same cutback area. Furthermore, it is to be noted that in the event that this type of analysis is requested, it has established that in order for the injuries to be removed to a de minimis level, i.e. non-actionable, the tower of the scheme would need to be cut off. The exercise has demonstrated that the cutback area would be completely disproportionate to the injury, therefore we deem this type of analysis to be inappropriate for this type of development.

## **COMPLICATIONS**

Despite continued efforts to conclude matters promptly, GIA have only managed to successfully conclude 11% of the active negotiations to date. In most cases, the absence of completed agreements has been primarily due to lack of swift response. A large number of the affected interests have not shown any signs of willingness to settle matters or enter into a deed of release thus we are having difficulty in foreseeing how these negotiations may unfold. The evidence of our attempts to negotiate with the affected parties can be found in the Negotiations Schedule depicted in Appendix 2. The actual correspondence can be disclosed upon request, subject to confidentiality. Please let us know whether you require this information at this stage. GIA are instructed to continue to make every effort to communicate with all affected owners with potentially actionable injury, and will keep you advised on request of steps taken and progress made.



For a number of reasons, our client is becoming increasingly concerned that despite strenuous and persistent effort to resolve matters, the lack of engagement from some of the neighbouring owners poses a significant threat to progressing the scheme. Chief among these reasons are (a) the early need to place very substantial pre-construction orders for materials which in aggregate run to many millions of pounds in order to facilitate construction to provide a continuing pipeline of top quality office accommodation for the City (as set out on the attached Alinea schedule dated 7 October 2015); (b) the very large potential number of parties who may wish to maintain actionable claims yet display no serious intention to negotiate (having a diametrically opposed commercial interest which conflicts with achieving the build out of this scheme); and (c) the risk that despite the application of extremely forensic and detailed analysis in accordance with best practice, some undiscovered claims might surface and imperil the safe progress of the project.

Accordingly we would formally request the City Corporation to consider the use of its powers under section 237 TCPA 1990 for the acquisition of relevant land for planning purposes in accordance with a scheme to be agreed between the City and the owner, unless it rapidly becomes evident that continued strenuous efforts to negotiate render this unnecessary.

It is of course acknowledged, based on (a) the precedents established and consistently followed in previous cases; (b) the legal and surveying advice which the City has received on use of s237; and (c) the criteria endorsed by the Court of Common Council in June 2011, that reliance on s237 procedures must only be progressed with great care and where a compelling case to do so as been made out. In the circumstances GIA's and our advice has been that it is indeed appropriate in this case to give early consideration to requesting that you obtain authority to use section 237 powers to override easements (rights to light) which have the potential to inhibit the scheme covered by the resolution passed on 17 November 2015.

Should you require any further information please do not hesitate to contact Patrick Robinson on 020 7466 2129; email [patrick.robinson@hsf.com](mailto:patrick.robinson@hsf.com).

Yours faithfully

Herbert Smith Freehills LLP

Encs:

**APPENDIX 4**  
**List of Affected Properties**



No	Property Address
1.	12-20 Camomile Street - 100 Bishopsgate
	15 St Helen's Place - 100 Bishopsgate
	16 St Helen's Place - 100 Bishopsgate
2.	5-7 St Helen's Place
3.	25 St Mary Axe
4.	52-58 Bishopsgate
5.	33 Great St Helen's
6.	3 St Helen's Place
7.	17 St Helen's Place
8.	60 St Mary Axe
9.	10 Wormwood Street
10.	83 London Wall
11.	1-3 Whittington Avenue
12.	Leadenhall Court
13.	1-5 Wormwood Street
14.	Camomile Court
15.	Tower 42 -- 20 Old Broad Street
16.	Tower 42 -- 25 Old Broad Street (Tower 42)
17.	Tower 42 - 27 Old Broad Street
18.	Tower 42 -- 15 Bishopsgate
19.	41 Threadneedle Street
20.	13-17 and 18 Old Broad Street
21.	40 Threadneedle Street
22.	Merchant Taylor's Hall
23.	7-9 Bishopsgate
24.	11 Bishopsgate
25.	28 Austin Friars
26.	27 Austin Friars
27.	22-25 Austin Friars
28.	26 Austin Friars
29.	Drapers Hall
30.	The Baltic Exchange
31.	Parish Church of St Helen's
32.	1 Undershaft
33.	Bury House
34.	Cunard Place/House
35.	113-115 Leadenhall Street
36.	Bankside House
37.	22 Billiter Street & 109-144 Fenchurch Street/17-18 Billiter St
38.	11 Leadenhall Street
39.	7-10 Leadenhall Street
40.	140 Leadenhall Street
41.	145-146 Leadenhall Street
42.	85 Gracechurch Street
43.	6-8 Bishopsgate
44.	6 Gracechurch Street
45.	19 Old Broad Street
46.	111-117 Old Broad Street
47.	37-38 Threadneedle Street
48.	36 Great St Helen's
49.	10-11 Austin Square
50.	99-101 Bishopsgate

APPENDIX 5  
PLANNING APPLICATION REPORT (extract)

283. With the development in place areas to the north east would enjoy some protection from wind, notably at St Helens Churchyard and the area around the Church compared to the existing baseline situation.
284. The open space at Crosby Square and outside 1 Undershaft would experience some worsening of conditions from the existing with conditions altered from 'sitting' to 'standing' levels in the summer and to 'leisure walking' in the windiest season. While this would be an adverse impact these levels would not cause unacceptable harm to amenity in this area.
285. Including the proposed development at 6-8 Bishopsgate in the assessment shows a slight improvement of conditions along Bishopsgate particularly around the entrance to the proposed pedestrian passageway on Bishopsgate but a worsening along Leadenhall Street. Levels here, however, would not exceed 'leisure walking' in the windiest season.
286. In conclusion the main wind effect of the proposed development would be to channel some of the prevailing south-westerly wind down to the ground increasing the windiness to the north of the site. With the proposed mitigation measures in place the assessment shows that wind would be diverted at high level before reaching the ground and at no point around the building or in the immediately surrounding area would the building cause conditions to exceed 'leisure walking' criteria. In the summer, conditions would be primarily 'sitting' or 'standing/entrance'. The results confirm that the proposed development would have some adverse impact but not such as to cause unacceptable harm to pedestrian level wind conditions which would remain at a level suitable for the urban environment in which the development is situated.
287. The separate verification assessment described at para 268 gives results which are in line with these results.

Daylight and Sunlight

288. An assessment of the impact of the development on daylight and sunlight to surrounding buildings has been undertaken in accordance with the Building Research Establishment (BRE) Guidelines and considered having regard to Policies 7.6 and 7.7 of the London Plan and DM 10.7 of the Local Plan. While the assessment has been carried out for all the surrounding buildings including commercial offices, only those considered as sensitive in terms of daylight and sunlight (15 in total) are evaluated in this report. These include residential properties at Wormwood Street and Creechurch Lane, (the nearest residential property at 50 Bishopsgate does not have windows that face the site and therefore would not be effected) and other sensitive sites such as the Church of St Helen's, St Andrew Undershaft Church, Drapers' Hall, Merchant Taylors' Hall, 19 Old Broad Street (City of London Club) and Gibson Hall, 15 Bishopsgate.
289. The assessment of daylight and sunlight is a comparative one measured against the current base conditions. As the site presently comprises development at just basement to ground levels and a core structure to

9<sup>th</sup> floor level any impact of the proposed building is likely to be more marked than otherwise would be the case.

### Daylight

290. In terms of impact on daylight the assessment shows that for 9 of the 15 properties identified as being sensitive the effect of the proposed development would be within BRE criteria and thus have a negligible impact. Of the remaining 6 properties, 2 (20-21 Wormwood Street and 18-20 Creechurch Lane) have residential accommodation at first floor and above with commercial at ground level. While the impact on the ground floor commercial element of the two buildings would exceed the BRE criteria, the impact on the residential floors above would be within the criteria and daylight would not be noticeably reduced. The overall effect on residential amenity would be negligible.
291. The remaining 4 properties that would experience noticeable reductions in daylight would be the Church of St Helen's Bishopsgate, Gibson Hall, St Andrew Undershaft Church and 19 Old Broad Street.
292. For the Church of St Helens the impact is regarded as moderate adverse; 26 windows out of 39 would experience noticeable losses of VSC and 4 rooms out of 12 would experience a noticeable reduction in NSL. These results are partly because the existing VSC levels are low meaning any alteration results in a disproportionate percentage change; those rooms affected by the reduction in NSL appear to be ancillary rooms to the main Church and not as sensitive in terms of daylight.
293. The impact on Gibson Hall would be moderate adverse. 46 of 61 windows would experience more than 40% reduction in VSC and 11 of 22 rooms would experience reductions in NSL above 20% although the report identifies the majority of affected rooms as offices and lobbies.
294. For St Andrews Church the impact is regarded as negligible as just one room (a kitchen) would experience a noticeable impact.
295. The impact on 19 Old Broad Street would be minor adverse. 23 of 27 windows would experience more than 20% reduction in VSC and 4 of 11 rooms would experience reductions of more than 40% in NSL. The report states that the impacted rooms and windows experience existing low levels (some are courtyard windows) and so the loss reflects a disproportionate percentage change.
296. The results show the development impact would have a particularly adverse effect on St Helen's Church and Gibson Hall as a number of windows and rooms would experience reductions beyond BRE recommended criteria. At St Helen's Church the spaces affected are predominantly areas ancillary to the main body of the Church; the main space would continue to enjoy light from south and east facing windows which would not be affected by the development. Similarly the main hall in Gibson Hall has a number of windows facing different directions. In conclusion although not compliant with BRE recommendations the proposal is not considered to have such an effect as to cause unacceptable harm.

297. In considering the impact on daylight to the Church of St Helen's and Gibson Hall the extent of impact caused by the proposed scheme would be slightly greater but not significantly different from that caused by the extant scheme.

### Sunlight

298. Eight properties have been identified as being sensitive in terms of sunlight. Of these four (all non-residential) would experience impacts ranging from minor to moderate adverse.
299. Most affected would be the Church of St Helens and Gibson Hall both due to their proximity to the development site. 18 of 33 windows at St Helen's Church would experience significant reductions in sunlight. As many of the affected windows are to the principal internal space, a further assessment was made of the sunlight to the space as a whole. An annual APSH of at least 18% would be retained which, while lower than the 25% BRE minimum criteria, could be considered commensurate with its City centre location. At Gibson Hall 40 of 61 windows would be significantly impacted, most of which are to offices and circulation space.
300. 6 upper level windows at Drapers Hall would experience a noticeable reduction in sunlight as would 7 windows at 19 Old Broad Street at the lower level on the courtyard. This is assessed as having a minor adverse impact.
301. In conclusion the proposed development would not 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 as outlined above which would be a breach of policy that tall buildings should not affect their surroundings adversely. The breach is largely caused by the proximity of the buildings to the development site; 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.
302. The assessment shows that the present scheme would have a greater impact on daylight and sunlight than the 'Pinnacle' scheme but in terms of daylight and sunlight to the 15 identified sensitive buildings the development would not result in significant additional adverse impact.

### Transient Overshadowing

303. The assessment of the impact of transient overshadowing was undertaken according to the BRE Guidelines in respect of several key amenity areas identified in proximity to the site and considered having regard to Policies 7.6 and 7.7 of the London Plan.
304. The assessment shows that in the existing situation much of the City is in shadow for long periods of the day due to the existing surrounding buildings.
305. On March 21<sup>st</sup> the development would cast a shadow at 10am on part of Finsbury Circus and between 1pm and 2pm on St Botolph Bishopgate



Development Manager (East)  
Department of Planning and Transportation  
Corporation of London Corporation  
Guildhall  
London  
EC2P 2EJ

**Date:** 7 March 2016  
**Your ref:** n/a  
**Our ref:** Denshaw\Adikk\303118.000002  
**Direct:** +44 20 7919 0582  
**Email:** willdensham@eversheds.com

**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

lon\_lib1\13890465\1\adikk

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**

cc/ Nabarro and Herbert Smith – solicitors for the Developer