



Property Investment Board

Date: WEDNESDAY, 10 JULY 2013
Time: 1.45pm
Venue: COMMITTEE ROOMS, 2ND FLOOR, WEST WING, GUILDHALL

Members: Deputy Michael Cassidy (Chairman)
Brian Harris (Deputy Chairman)
Deputy Ken Ayers
Mark Boleat
Ray Catt
Roger Chadwick
Alderman Sir Robert Finch
George Gillon (Chief Commoner)
Deputy Keith Knowles
Edward Lord
Alastair Moss
Dhruv Patel
Tom Sleigh

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Lunch will be served in the Guildhall Club at 1pm

John Barradell
Town Clerk and Chief Executive

AGENDA

Part 1 - Public Agenda

1. **APOLOGIES FOR ABSENCE**
2. **MEMBERS' DECLARATIONS UNDER THE CODE OF CONDUCT IN RESPECT OF ITEMS ON THE AGENDA**
3. **MINUTES**
To approve the public minutes and summary of the Property Investment Board meeting held on 11 June 2013.
For Decision
(Pages 1 - 4)
4. **LAW COMMISSION CONSULTATION ON RIGHTS TO LIGHT**
Joint report of the Chamberlain and the Remembrancer.
For Decision
(Pages 5 - 12)
5. **QUESTIONS ON MATTERS RELATING TO THE WORK OF THE BOARD**
6. **ANY OTHER BUSINESS THAT THE CHAIRMAN CONSIDERS URGENT**
7. **EXCLUSION OF THE PUBLIC**
MOTION – That under Section 100A(4) of the Local Government Act 1972, the public be excluded from the meeting for the following items on the grounds that they involve the likely disclosure of exempt information as defined in Part 1 of Schedule 12A of the Local Government Act.

Part 2 - Non-Public Agenda

8. **NON PUBLIC MINUTES**
To approve the non-public minutes of the Property Investment Board meeting held on 11 June 2013.
For Decision
(Pages 13 - 18)

ALL ESTATES

9. **STRATEGIC ASSET ALLOCATION REVIEW - CASH INVESTMENTS**
Report of the Chamberlain.
For Information
(Pages 19 - 48)
10. **FORMER TENANTS RENT ETC ARREARS WRITE OFFS**
Report of the Comptroller and City Solicitor.
For Decision
(Pages 49 - 54)

11. **REVENUE OUTTURN 2012/13**
Joint report of the Chamberlain and the City Surveyor.
For Information
(Pages 55 - 60)
12. **CITY FUND, CITY'S ESTATE AND BRIDGE HOUSE ESTATES - PERFORMANCE MONITORING TO 31 MARCH 2013**
Report of the City Surveyor.
For Information
(Pages 61 - 68)
13. **QUARTERLY DELEGATED AUTHORITIES UPDATE - 1 APRIL 2013 TO 30 JUNE 2013**
Report of the City Surveyor.
For Information
(Pages 69 - 80)
14. **ARREARS REPORT MARCH 2013 FINAL**
Report of the City Surveyor.
For Information
(Pages 81 - 102)

CITY'S ESTATE

15. **SURRENDER OF LEASES SUITES E, G, AND H, 10 LINDSEY STREET, SMITHFIELD MARKET, EC1 & GRANT OF NEW LEASE AT SUITES E, G, AND H, 10 LINDSEY STREET, SMITHFIELD MARKET, EC1**
Report of the City Surveyor.
For Decision
(Pages 103 - 108)
16. **CITY'S ESTATE - LETTING REPORT**
Report of the City Surveyor.
For Decision
(Pages 109 - 114)

CITY FUND ESTATE

17. **FROBISHER CRESCENT : UPDATE REPORT ON 3 RETAINED FLATS AND RELATED MATTERS**
Report of the City Surveyor.
For Information
(Pages 115 - 122)

BRIDGE HOUSE ESTATES

18. **10-16 BEVIS MARKS LONDON EC3 - DISPOSAL OF LONG LEASEHOLD INTEREST**

Report of the City Surveyor.

For Decision
(Pages 123 - 130)

19. **GATEWAY 3, 4 & 4C OUTLINE OPTIONS APPRAISAL - REDEVELOPMENT OR REFURBISHMENT OF BRIDGE HOUSE 181 QUEEN VICTORIA STREET EC4 AND THE ADJOINING CAR PARK**

Report of the City Surveyor (To Follow).

For Decision

20. **NON-PUBLIC QUESTIONS ON MATTERS RELATING TO THE WORK OF THE BOARD**

21. **ANY OTHER BUSINESS THAT THE CHAIRMAN CONSIDERS URGENT AND WHICH THE BOARD AGREES SHOULD BE CONSIDERED WHILST THE PUBLIC ARE EXCLUDED**

PROPERTY INVESTMENT BOARD

Tuesday, 11 June 2013

Minutes of the meeting of the Property Investment Board held at Guildhall, EC2
on Tuesday, 11 June 2013 at 1.45pm

Present

Members:

Deputy Michael Cassidy (Chairman)
Brian Harris (Deputy Chairman)
Deputy Ken Ayers
Roger Chadwick
George Gillon (Chief Commoner)
Edward Lord
Alastair Moss
Tom Sleigh

Officers:

Jacqui Daniels	- Town Clerk's Department
Daniel Hooper	- Town Clerk's Department
John James	- Chamberlain's Department
Tim Rhodes	- Comptroller & City Solicitor's Department
Peter Bennett	- City Surveyor
Nicholas Gill	- City Surveyor's Department
Colin Wilcox	- City Surveyor's Department

1. APOLOGIES FOR ABSENCE

Apologies were received from Mark Boleat, Ray Catt, Alderman Sir Robert Finch, Deputy Keith Knowles and Dhruv Patel.

2. MEMBERS' DECLARATIONS UNDER THE CODE OF CONDUCT IN RESPECT OF ITEMS ON THE AGENDA

There were no declarations.

3. MINUTES

The public minutes and summary of the meeting held on 14 May 2013 were approved.

4. QUESTIONS ON MATTERS RELATING TO THE WORK OF THE BOARD

There were no questions.

5. ANY OTHER BUSINESS THAT THE CHAIRMAN CONSIDERS URGENT

There were no urgent items.

6. **EXCLUSION OF THE PUBLIC**
RESOLVED – That under Section 100A(4) of the Local Government Act 1972, the public be excluded from the meeting for the following items on the grounds that they involve the likely disclosure of exempt information as defined in Part 1 of Schedule 12A of the Local Government Act.
7. **NON PUBLIC MINUTES**
The non-public minutes of the meeting held on 14 May 2013 were approved.
8. **CITY FUND, CITY'S ESTATE, AND BRIDGE HOUSE ESTATES AND STRATEGIC PROPERTY ESTATE - ANNUAL VALUATION**
The Board received a report of the City Surveyor.

RECEIVED.
9. **CITY SURVEYOR'S DEPARTMENT REORGANISATION CHANGE MANAGEMENT PROJECT - STAFF CONSULTATION**
The Board received a report of the City Surveyor.

RECEIVED.
10. **ORACLE UPGRADE TO RELEASE 12 AND MANHATTAN SYSTEM REPLACEMENT - GATEWAY 4, DETAILED OPTIONS APPRAISAL**
The Board received a joint report of the Chamberlain and the City Surveyor.

RECEIVED.
11. **2 FANN STREET, EC2 - LONG LEASE DISPOSAL TO REDROW HOMES LIMITED**
The Board approved a report of the City Surveyor.
12. **21 GRAFTON STREET, W1 - DISPOSAL OF FREEHOLD INTEREST**
The Board approved a report of the City Surveyor.
13. **BRIDGE HOUSE ESTATES - LETTING REPORT**
The Board approved a report of the City Surveyor.
14. **NON-PUBLIC QUESTIONS ON MATTERS RELATING TO THE WORK OF THE BOARD**
There were no questions.
15. **ANY OTHER BUSINESS THAT THE CHAIRMAN CONSIDERS URGENT AND WHICH THE BOARD AGREES SHOULD BE CONSIDERED WHILST THE PUBLIC ARE EXCLUDED**
There was one urgent item.

The meeting ended at 2.25pm

Chairman

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Agenda Item 4

Committee:	Date(s):
Property Investment Board Planning and Transportation Committee	10 July 2013 16 July 2013
Subject:	Public
Law Commission Consultation on Rights to Light	
Report of:	For Information
City Surveyor and the Remembrancer (CS 250/13)	
Summary	
<p>On 18th February 2013 the Law Commission issued a consultation paper relating to Rights to Light seeking responses by the end of May 2013. Officers of the City Corporation formulated a response following discussion with the Law Commission and representatives of the British Property Federation.</p> <p>The Remembrancer responded to the Law Commission and a copy of the response is appended to this report.</p>	
Recommendation	
<ul style="list-style-type: none">• That the contents of this report are noted.	

Main Report

Background

1. The consultation on rights to light forms part of the Law Commission's general statutory duty to review the law and consider reform. The Commission's stated aim was to investigate whether the law by which rights of light are acquired, enforced and extinguished provides an appropriate balance between the important interests of landowners and the need to facilitate the effective and efficient use of land through its development. With this in mind the Consultation Paper has 3 key objectives
 - a) Introduce greater certainty and transparency, making disputes simpler quicker and easier to resolve.
 - b) Ensure rights of light do not act as an unnecessary constraint on development.
 - c) Make sure that the important amenity value of rights to light remains protected under the law.
2. The Law Commission has sought to reduce the impact of rights to light by introducing four proposals for consideration. The four provisional proposals contained in the Consultation Paper are as follows:

- a) That for the future it should no longer be possible to acquire rights to light by prescription
- b) The introduction of a new statutory test to clarify the current law on when courts may order a person to pay damages instead of ordering that person to demolish or stop constructing a building that interferes with a right to light.
- c) The introduction of a new statutory notice procedure which requires those with the benefits of rights to light to make clear whether they intend to apply to the court for an injunction (ordering a neighbouring landowner not to build in a way that infringes their right to light) with the aim of introducing greater certainty into rights to light disputes.
- d) That the Lands Chamber of the Upper Tribunal should be able to extinguish rights to light that are obsolete or have no practical benefit with payment of compensation in appropriate cases, as it can do under the present law in respect of restrictive covenants

The Consultation response

- 3. In its response the City provided evidence of the impact and scale of the issue by identifying the number of schemes and the associated quantum of floorspace that is actively being delivered (or pending a pre-let) in the Square Mile where rights of light have had a significant and material impact. Of the 37 schemes identified 20 have been subject to some form of intervention by the City totalling 6.2 million square feet of office floorspace. The development of 20 Fenchurch Street demonstrates the City's approach in acquiring an interest in the site so as to trigger its powers under s237 in an effort to resolve a difficult right to light issue.
- 4. The Commission invited submissions regarding the test to be applied in relation to the award of damages in lieu of an injunction. The Commission's activity in this area has been broadly welcomed by the property industry. Experience in the City has shown that significant delays arise from dominant owners seeking an element of profit share relating to any uplift in floorspace achieved across the site. This is less than satisfactory and difficult to apportion, particularly where there are multiple interests that are impacted. The City's response supported an assessment based on diminution in value with a multiplier linked to varying levels of light reduction which would be a more appropriate measure as this would better reflect the specific circumstances of each case.
- 5. Presently many dominant owners use a combination of delay and a threat of injunction as a mechanism to frustrate development and extract greater compensation. Seeking to address this issue, the Commission proposed a new mechanism to notify neighbouring properties of possible interference with rights to light. A Notice of Proposed Obstruction would be served by, for instance, a developer on potentially affected neighbour and would require that neighbour to declare their objection within 4 months from the service of the notice. This proposal is broadly to be welcomed as it seems likely to

encourage any rights to light disputes to be raised at an earlier stage in the development cycle.

6. The City Corporation has requested clarification of the Commission's proposals in relation to the jurisdiction of the Lands Chamber of the Upper Tribunal

Conclusion

7. The Consultation Proposal has been welcomed by the development industry. While some elements require further consideration by the Law Commission, it seems likely that the proposals will encourage a fairer and more expeditious settlement of rights to light disputes. This, in turn, should help promote economic growth. The City has a good working relationship with the Law Commission and will continue to maintain a dialogue on this matter. Your Committee will receive further Reports as appropriate. .

Appendices

- Appendix 1 – City of London Corporation Response to the Law Commission

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City of London Corporation Response to the Law Commission

Rights to Light Consultation – City of London Response

1 Introduction

1. The comments in this response to the Law Commission's consultation paper 210 on rights to light are intended to provide a guide to the City's current thinking.

2 Impact of rights to light on development

2. In order to evaluate the impact of rights to light issues on development in its area, the City has reviewed those schemes that are actively being delivered and those schemes pending subject to pre-letting.
3. Rights to light have a significant and material impact on the delivery of schemes in the City market. There are 37 schemes that are either currently being delivered or are awaiting a pre-let to commence construction, totalling circa 10.3 million sq ft. Of these schemes, 20 have been subject to intervention by the City (both formal and informal) in terms of promoting resolution of rights to light issues. The ability to deliver these schemes has been frustrated, prior to City engagement, because of rights to light issues. The vast majority of the floorspace being created in the square mile was within the scope of these 20 schemes, amounting to 6.2 million sq ft of office floorspace. A 20 Fenchurch Street demonstrates the City's approach in acquiring an interest in the site so as to trigger its powers under s237 in an effort to resolve difficult right to light issues.

3 Damages

4. On this issue, the City is able to draw on its experience in its capacities as a land owner, developer and planning authority.
5. Damages based on share of profit are not invariably the most apt method of calculating compensation for the loss of a right to light. Such an approach is awkward, for example, where there are overlapping right to light interests. In addition, where, for instance, a building is developed without a direct profit motive it would be inappropriate for a measure of damages to be based on share of profit. Such situations may arise, for instance, where a local authority develops a site for housing social enterprises. It is also possible, as part of the growing moves towards regenerating high streets, that corporate landlords as well as local governmental ones will develop sites on a not for profit – or not mainly for profit – basis. The City suggests that, in its assessment and recommendations, it would be helpful for the Law

Commission to recognise the diversity of reasons for development and support a measure of damages based on loss in value. Assessment on this basis would have the important merit of being in keeping with familiar compulsory purchase valuation principles.

6. The City supports the Commission's apparent inclination towards a diminution in value basis for assessing damages. It may be that the Commission is willing to go further and consider the merits of setting multipliers so that varying multipliers of the capitalised rent loss are linked to specific levels of light reduction. This would enable the level of a loss of light in individual cases to be reflected in the value of damages awarded. The City would welcome an investigation by the Commission into this aspect of damages.
7. From time to time decided cases take the exact nature of the dominant tenement into account in assessing damages – a loss of natural light to commercial office developments, for example. The Law Commission may wish to consider reinforcing the principle that similar losses of light have different effects on different dominant owners, those effects being determined by the nature of the dominant owner. There is a considerable difference, for instance, between the loss of light to a homeowner or small business, perhaps a textile designer, and the loss of an equal amount of light to a commercial business development where electric lighting operates regardless of the number or size of apertures. Such considerations are currently taken into account by courts when determining whether to grant an injunction.

4 Proposed Notices

8. The City agrees with the Law Commission's observation that dominant owners often take a long time to declare their position and any intention to seek an injunction. Dominant owners may have a variety of reasons for not declaring their position – from a long-distance owner knowing nothing of the development until a development proposal is well advanced through to an owner seeking to obtain pecuniary advantage by deliberately declaring his hand at a late stage.
9. The City supports the Law Commission's proposals to introduce a 'notice of proposed obstruction' (NPO). The City agrees with the Commission's broad proposals as to the form and content of the NPO (at 6.14 et seq). The City supports the Commission's proposal (at 6.16) that only freeholders and leaseholders would be permitted to serve NPOs. The Law Commission's broad proposal regarding the requirement to register an NPO as a local land charge is an important feature of ensuring the successors in title of both dominant and servient tenements are easily able to determine the nature of the land and the rights appertaining to it.
10. Whether or not, as the Commission suggests (at 6.9), NPOs are used to "flush out" potential claimants is of little practical significance. The City would observe that, in respect of the intention behind the notice, the use of

NPOs should not be limited and believes that the Law Commission should not make any recommendation in this regard.

5 Section 237

11. The City supports the Commission's conclusion that s237 fulfils a valuable role and is a useful mechanism to manage some rights to light issues in certain circumstances. The City considers the opportunity for local authority intervention by s.237 arrangements will remain of value in particular cases, and therefore would not wish to see the use of such arrangements prejudiced. The City reaffirms its position as described in 7.56.
12. While the Commission recognises that s.237 is outside the scope of the consultation, it is important to consider how the interface between s.237 and NPO procedures and the expanded Lands Chamber jurisdiction would operate in practice. The Commission is invited to consider whether, if use of s237 is regarded as a tactic of last resort, it would be necessary to complete the NPO process prior to exercising s237 powers. Alternatively might an NPO foreshorten the period within which the powers under s237 might be deployed?
13. If it is the Commission's proposal to expand the jurisdiction of the Lands Chamber to encompass all right to light claims, that approach may run the risk of thwarting the use of s237. By way of example, in 7.117 the Commission notes the likely importance of a 'public interest' test in any new Lands Chamber jurisdiction. The Commission should consider whether this proposed expanded jurisdiction will cut across the public interest considerations that must be taken into account in the use of s237 powers: for example, would it ever be 'necessary' to use s237 powers if there is a recourse to the Lands Chamber under its expanded jurisdiction? Planning authorities' planning powers – which reflect their position as being best placed to balance local interests in a consistent manner - would be diminished if the use of s237 was to be limited or extinguished
14. Subject to this consideration and in seeking to preserve the efficacy of s237, the Commission might consider the merits of a two-step framework to permit planning authorities to engage s237 prior to any recourse to the expanded Lands Chamber. If the planning authority wishes to engage s237 then the process will mirror the current arrangements and the rights and responsibilities of all parties will remain the same. If, however, an authority does not wish to utilise s237 then the Commission's proposed expanded Lands Chamber jurisdiction would be available.

6 Which Tribunal?

15. It will be important to consider how the proposed expanded jurisdiction of the Lands Chamber might interact with the issue of conventional proceedings seeking to injunct an interference with light. The Commission's proposals to expand the Chamber's jurisdiction, with the resulting liberalisation of a developer's ability to apply for the Chamber to use its

power to discharge or modify a restrictive covenant under s84 Law of Property Act 1925, may encourage developers to pursue a free-standing Lands Chamber application to discharge a right to light. It is plausible to imagine that, at the same time, the dominant owner will seek a remedy through conventional county or High court proceedings. In the section dealing with this aspect, 7.112 et seq, the Commission does not appear to consider the possibility that in the future a dominant owner might issue proceedings (or, indeed, a NPO counter notice) to protect his position and separately the developer might commence proceedings in the Lands Chamber to extinguish the same right to light. It seems open to a developer to pursue this course because, as the Commission notes in 7.111, a developer may approach the Lands Chamber under its expanded jurisdiction not only where there is consent or no injury but also based on an argument that his use of the land is reasonable.

16. The Commission should consider whether parallel proceedings (court and Chamber) would impose delay and additional expense when proceedings in, for instance, the Lands Chamber have to be stayed in order for a court application to be heard and the matter rehearsed afresh.
17. Does the Commission propose that a reference to the Lands Chamber would allow a development to proceed – as with compulsory purchase – or would such a reference stay development as in the case of injunction proceedings?
18. Finally, in coming to its judgement on whether to recommend re-aligning the tribunal in which the bulk of rights to light issues are considered, we believe that the Commission should take into account that the Land Chamber sits only in London and that it is well established that no legal aid is available (while legal aid applications are unlikely to be granted in the county court, an application is more likely to be positively considered). While the Commission does not tackle the point directly, does it foresee, as part of a general move towards expanding the Land Chamber's jurisdiction, the introduction of an injunctive power into the Chamber's suite of powers?

7 Prescription

19. The arguments for and against abolition of rights of light being acquired by prescription are finely balanced. However, it is considered that great caution should be exercised in relying, as a justification for abolition, on the ability of planning policy to protect the light and amenity of residential owners. While loss of amenity (including sunlight/daylight) is an acknowledged planning consideration, were owners to lose alternative property law routes to pursue concerns about light, it is likely that those concerns would lead to increased focus on planning amenity and sunlight/daylight issues with implications for evaluation of planning applications and the time involved in determination (and possible appeal).

Agenda Item 8

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of the Local Government Act 1972.

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Agenda Item 9

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