

<b>Committee(s):</b>	<b>Date(s):</b>	<b>Item no.</b>
Planning and Transportation Committee	12 December 2023	
<b>Subject:</b> Salisbury Square Development - Appropriation for Planning Purposes	<b>Public</b>	
<b>Report of:</b> City Surveyor	<b>For Decision</b>	
<b>Ward (if appropriate):</b> Farringdon Within Castle Baynard Ward		
<b><u>Summary</u></b>		
<p>This report seeks your approval for the appropriation of land for planning purposes in order to engage the provisions of Section 203 of the Housing and Planning Act 2016 (“Section 203”) to facilitate the carrying out of the redevelopment of Salisbury Square (the “Redevelopment Site”).</p> <p>The City Corporation (in its capacity as local planning authority) granted planning permission to the City Corporation (in its capacity as landowner of the Redevelopment Site) for a scheme for the Redevelopment Site on 30 July 2021 under planning reference 20/00997/FULEIA (“the Development”). The Development provides for a new combined law courts building, a new police station, offices and public realm. There is a critical path for the Development arising from the programme for Her Majesty’s Courts and Tribunals Service (“HMCTS”) to occupy the new City of London Law Courts building for the administration of justice within 3 months of Practical Completion on 28 September 2026 and from the need for the City of London Police to occupy the new police station by March 2027 when its lease on existing premises at 21 New Street ends.</p> <p>Delva Patman Redler, Rights of Light consultants to the City of London have advised that the Development is at risk due to injunctable Rights of Light which are most unlikely to be released on the basis of reasonable compensation negotiations within the foreseeable future.</p> <p>Implementation of the Development within the critical path programme would be facilitated by the appropriation of the Main Development Site for the planning purposes of the Development. This would remove the injunction risk pursuant to Section 203. Section 203 authorises interferences with Rights of Light and Section 204 provides that compensation is payable for any interference with a right or interest or breach of a restriction which is authorised by Section 203. Negotiations to settle compensation payments would continue after any appropriation and all existing offers made to rights holders would be honoured.</p>		
<b>Recommendation</b>		
It is recommended that it be resolved that:		

1. The Main Development Site is no longer required for the purpose for which it was acquired;
2. The Main Development Site to be appropriated for the planning purpose of the Development (in its current form or as it may be varied or amended); and
3. All existing offers made to rights holders be honoured.

## Main Report

### 1. Background

1.1 The Development Site (see Site Plan at **Appendix 2**) comprises:

1.1.1 **Chronicle House, 72-78 Fleet Street; 80-81 Fleet Street; 2-3 Salisbury Court; Greenwood House, 4-7 Salisbury Court; 1 Salisbury Square and 8 Salisbury Court; Fleetbank House 2 -6 Salisbury Square; 35 Whitefriar’s Street and 36-38 Whitefriar’s Street** acquired by the City Corporation in its City Fund (local authority) capacity under Section 7 of the City of London (Various Powers) Act 1958 for “strategic purposes”, prior to the Development being contemplated by the City Corporation (“The Main Development Site”); and

1.1.2 **69, 70 and 71 Fleet Street** acquired by the City Corporation in its City Fund (local authority) capacity under Section 7 of the City of London (Various Powers) Act 1958 in 2018 for the purposes of the Development.<sup>1</sup>

1.2 The City Corporation (in its capacity as local planning authority) resolved to grant planning permission for the Development on 22<sup>nd</sup> April 2021. The Development was supported by the Mayor. Planning permission was granted for construction of a new combined law court, a new police station, and a new office building together with public

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<sup>1</sup> The delegated report of 17/9/2018 which authorised the acquisition of 69-71 Fleet Street states that “*It is intended to hold 70 Fleet Street as a strategic property within the overall City Fund Estate*” However, in respect of the related disposal of Eden House, the Report to 10/10/2018 Property Investment Board of the Action taken Between Meetings states that the purchase of 70 Fleet Street is to be funded from the allocation of funds approved by Court of Common Council to proceed with a Combined Courts, Police and Commercial project on the Fleet Street Site. It can therefore be reasonably inferred that the 69, 70 and 71 Fleet Street site was acquired for the purposes of the proposal and therefore the requirement set out at section 203(2)(d) and (5)(d) of the Housing and Planning Act 2016 is satisfied.

realm works on 30<sup>th</sup> July 2021 under planning reference 20/00997/FULEIA. An image of the permitted Development is at **Appendix 3**.

- 1.3 As set out in the Planning and Development Director's Report to the Special Planning and Transportation Committee of 22<sup>nd</sup> April 2021 ("the Planning Report"), the proposal was considered to be in substantial compliance with the policies that relate to it including the strategic objective to promote the City as the leading international financial and business centre and London Plan Policy S1 that supports the development of London's social infrastructure. The scheme provides a development that would reinforce the City's reputation as a global centre for business (especially legal business), with the state-of-the-art Court and police station supporting the vision to modernise and upgrade the justice system such that it works for everyone. The scheme delivers a high-quality commercial building which will meet business needs, supporting and strengthening opportunities for continued collaboration and clustering of businesses, especially in the legal services sector. The buildings would be designed to high sustainability standards with dedicated areas of planting and greening being incorporated to significantly increase the biodiversity on site. The scheme will preserve the special architectural and historic interest, as well as heritage significance of many of the buildings within the area.
- 1.4 The buildings formerly on the Redevelopment Site have been demolished and redevelopment has commenced.
- 1.5 There is a critical path for the Development arising from the programme for Her Majesty's Courts and Tribunals Service ("HMCTS") to occupy the new combined law courts building for the administration of justice within 3 months of Practical completion of 28 September 2026 and from the need for the City of London Police to occupy the new police station by March 2027 when its lease on existing premises at 21 New Street ends. Were the programme to be impeded or delayed the provision of public services and delivery of public benefits would be compromised, as set out in **Appendix 1**.
- 1.6 The Development raises Rights of Light issues as there are properties surrounding the Development Site which enjoy rights of light over the Development Site. A Right of Light is an interest in land (i.e. an easement) which entitles a neighbouring land owner to enjoy light across their neighbour's land. Development that causes interference with the right often entitles the rights holder to claim compensation and/or an injunction preventing development. In this case there are affected Rights of Light that could give rise to injunction applications to prevent the Development ("injunctable Rights of Light") (see List of Affected Properties at **Appendix 4**).

## **2. Appropriation and the operation of Section 203**

- 2.1 A person may carry out building or maintenance work or may use land even if it involves interfering with a relevant right or interest (including rights of light) if the four conditions set out in Section 203(2)(3)(5) and (6) are satisfied (as applicable).<sup>2</sup> A person is liable to pay compensation for any interference with a relevant right interest which is authorised by section 203. Therefore where the statutory override provisions of Section 203 are engaged, no injunction may be obtained to prevent development causing such interference.
- 2.2 69-71 Fleet Street was acquired by the City Corporation (acting as local authority) after 13<sup>th</sup> July 2016 for the purposes of facilitating the Development and all four conditions referred to in Section 203(2) and (5) are satisfied in relation to that land.<sup>3</sup>
- 2.3 The Main Development Site was acquired in 2008 for “general strategic purposes” prior to the new combined court and police station proposals being contemplated. It was not therefore acquired for planning purposes related to the Development (being the building work now contemplated).
- 2.4 An appropriation of the Main Development Site for the planning purpose of facilitating the Development would result in Section 203 being engaged in respect of the entirety of the Development Site.
- 2.5 Section 12 authorises the City to appropriate land belonging to it to for any purpose for which it is authorised to acquire land if it is not required for the purpose for which it was acquired.
- 2.6 Court of Common Council resolved on 1 December 2011 that the determination of whether or not to proceed with acquisitions or appropriations should be delegated to your Committee (which may delegate matters to the Town Clerk in consultation with the Chairman and Deputy of your Committee). This was affirmed by Court of Common Council on 8 December 2016 (following changes to the relevant statutory provisions) in resolving that acquisitions and appropriations may be considered by your Committee on a case by case basis “*to allow developments to proceed (where they would otherwise be inhibited by injunctions or threats of injunctions prohibiting infringements of rights of*

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<sup>2</sup> The 4 conditions are that: the land has become vested in or acquired by a specified authority or appropriated by a local authority for planning purposes after 13 July 2016 or is other qualifying land; there is planning consent for the building; the authority could acquire the land compulsorily for the building; the building is used for purposes for which the land was vested in acquired or appropriated

<sup>3</sup> See footnote 4 in respect of conditions (a) to (c) and footnote 1 and paragraph 2.2 in respect of condition (d)

*light) subject to: (i) such development being in the public interest, such public interest being sufficient to justify interference with any private rights and proportionate; (ii) the relevant criteria [listed at paragraph 3.2 below] being met; and (iii) where feasible and appropriate in the circumstances of the case, prior consultation being carried out by rights holders being appropriately advised of the proposed resolution, made aware of any report, and provided with a contact at the City Corporation to whom they can direct comments.”*

- 2.7 The relevant criteria (as referred to in paragraph 2.4 above) were set out in Appendix 1 to the report from your committee to the Court of Common Council which was presented on 8<sup>th</sup> December 2016. Those criteria are set out in paragraph 3.2 below, and their application is considered in **Appendix 1** to this report.

### **3. Considerations**

- 3.1 In order to appropriate the Main Development Site for the planning purpose of facilitating the carrying out of the Development pursuant to Section 12 of the 1949 Act the City Corporation must be satisfied that the land is no longer required for the purposes for which it was acquired, and that the purpose for which the land is to be appropriated is one for which the City Corporation is authorised to acquire land.
- 3.2 In order to resolve to appropriate the Main Development Site in order to engage the Section 203 statutory override provisions your Committee must be satisfied there is a compelling case in the public interest that justifies authorising interference with relevant rights in order to allow the building or maintenance work or use proposed to be carried out within a reasonable time, and in particular, that:
- 3.2.1 There is planning consent for the proposed development;
- 3.2.2 Acquisition or appropriation and consequent engagement of Section 203 will facilitate the carrying out of development, redevelopment or improvement on or in relation to land, and in particular the proposed development for which planning consent has been obtained, or similar development;
- 3.2.3 The development, redevelopment or improvement will contribute to the promotion or improvement of the economic, social or environmental wellbeing of the City’s area and those benefits could not be achieved without giving rise to all of some of the infringements - therefore it is in the public interest that the land be appropriated

by the City for planning purposes, so as to facilitate the development proposed or similar development;

- 3.2.4 There will be infringements of one or more relevant rights or interests as defined in section 205(1) of the Housing and Planning Act 2016 or breach of a restriction as to user of land which cannot reasonably be avoided;
  - 3.2.5 The easements to be interfered with cannot reasonably be released by agreement with affected owners within a reasonable time (and adequate evidence of satisfactory engagement, and where appropriate negotiation, has been provided for consideration by your Committee);
  - 3.2.6 The ability to carry out the development, including for financial or viability reasons, is prejudiced due to the risk of injunction, and adequate attempts have been made to remove the injunction risks;
  - 3.2.7 A decision to appropriate in order to engage Section 203 would be broadly consistent with advice given in the DLUHC Guidance on Compulsory Purchase so far as relevant;
  - 3.2.8 The use of the powers is proportionate in that the public benefits to be achieved outweigh the infringement of human rights;
  - 3.2.9 Rights holders have been consulted regarding the engagement of section 203 wherever feasible and appropriate in the circumstances of the case.
  - 3.2.10 The authority could acquire the land compulsorily for the purposes of the building or maintenance work or the use of the land (and where the land in issue is currently owned by the authority it is to be treated for these purposes as not currently owned by the authority).
- 3.3 The issues are evaluated at **Appendix 1**. It is considered, on the basis of the evaluation at **Appendix 1**, that the criteria for appropriation of the Main Development Site are fully met (subject to consideration of any consultation responses, which will be reported to your Committee).

#### **4. Legal Implications**

- 4.1 The specific “Separation of Functions” considerations which applied to the determination of the application for planning permission (whereby members and officers involved in promoting the proposal should not also be involved in determining the planning application) are not engaged in considering whether or not to appropriate the Main Development Site for the planning purposes of the Development. The appropriation decision is for the City Corporation as local authority landowner (not as local planning authority). Other than for the determination of planning applications the usual principle applies that involvement in other committees does not give rise to conflicts, and Members are well used to wearing different “hats” and in only applying the considerations relevant to the decision before them.
- 4.2 Any appropriation would be recorded by a Memorandum of Appropriation prepared by the Comptroller and City Solicitor and placed on the Deed Packet for the redevelopment Site.
- 4.3 All other legal implications are included in the body of the report and Appendix 1.

## **5. Financial Implications**

None

## **6. Consultees**

On 21 September 2023 a letter was sent from the City to 14 affected rights holders advising that appropriation was being considered (**Appendix 6**). Affected rights holders were invited to contact the City Surveyor, Paul Wilkinson, within 14 days of the letter should they have any comments. Four responses were received seeking further negotiations, and challenging the lawfulness of appropriation including on the basis it would be premature (particularly since the City had made a single offer at the time of sending the 21 September letter and S.203 should be a last resort). In an open letter, one respondent refers to an injunction as being the primary remedy, and later (in the same letter) states “We are very concerned that if the City proceeds as set out in the City Letter at this stage, and in advance of having meaningfully engaged to reach agreement on release of rights, our client will have to consider its legal remedies.” In response to the three letters, replies were sent and further negotiations invited. Any further progress in reaching agreements will be reported to your Committee. The contents of the three responses are not considered to undermine the justification for appropriation. In particular, the criteria at 3.2.5 above that **“the easements to be interfered with cannot**

**reasonably be released by agreement with affected owners within a reasonable time”** is considered to be met (notwithstanding the contents of the three responses) for the reasons set out at paragraphs 3.2.5.3 and 3.2.5.4 of Appendix 1. In brief, this is largely because it is not realistic to envisage that agreements will be reached with all 14 rights holders within the critical path for the new combined court building and police station. In addition there remains a risk that rights holders may seek an injunction. Rights holders have been further advised of this report and its proposals, and notified that they can provide comments to the City Surveyor

Your Committee will be made aware of any further representations received from them.

## **7. Conclusions**

It is considered that the appropriation of the Main Development Site for the planning purposes of the Development in order to engage the Section 203 statutory override provisions should be approved (subject to consideration of any consultation responses). The relevant criteria have been evaluated and the outcome of the evaluation supports the Recommendations. The Recommendations will facilitate the carrying out of the Development. Those with Rights of Light that are infringed will be entitled to compensation and negotiations to settle compensation will continue.



**Background papers: Planning Report**

**Appendices:**

- 1. Evaluation**
- 2. Site Plan**
- 3. Image of Development**
- 4. List of affected properties**
- 5. Letter from Delva Patman Redler**
- 6. Consultation Letter from the City to affected rights holders**

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## APPENDIX 1 – EVALUATION OF CRITERIA

The criteria for appropriation set out at Paragraph 3 of the Report are considered below (following the paragraph numbers in the Report):

### 3.1 **Is the Appropriation power in Section 12 engaged**

3.1.1 It is considered that the Main Development Site is no longer required for the purpose for which it was acquired.<sup>4</sup> The acquisition was intended to secure the future provision of Grade A floorspace which was rare in the vicinity at that time. However, it has since been determined, both in the City Corporation’s landowner capacity and in the City Corporation’s local planning authority capacity, that strategic objectives and the public interest can be achieved by the Development. As such, the Main Development Site is no longer required for the purpose for which it was acquired.

3.1.2 The City Corporation would be authorised to acquire the Main Development Site for the purposes of the Development (under Sections 226 and 227 of the Town and Country Planning Act 1990).

3.1.3 By reason of 3.1.1 and 3.1.2 the City Corporation’s power to appropriate the Main Development Site for the purposes of the Development is engaged.

3.2 **In order to resolve to appropriate the Main Development Site your Committee must be satisfied there is a compelling case in the public interest** for the powers conferred by section 203 to be engaged in order that the Development can be carried out within a reasonable time, and in particular, that:

3.2.1 **There is planning consent for the proposed development:** Planning consent was granted on 30 July 2021 under reference 20/00997/FULEIA

3.2.2 **The appropriation and consequent engagement of Section 203 will facilitate the carrying out of the Development:**

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<sup>4</sup>The Finance Committee report of 23/9/2008 seeking support for the potential acquisition stated that “*this particular acquisition has a number of strategic advantages*”. The Urgency report to Court of Common Council of September 2008 stated that it was “*a large site capable of accommodating a substantial redevelopment scheme in this pivotal midtown location. It is envisaged that any redevelopment scheme would provide grade A space on substantial floorplates which are, at present, rare in the immediate vicinity*”

3.2.2.1 Demolition has occurred. The construction programme is for the main works contract to be delivered by Mace to achieve Practical Completion on 28 September 2026. Occupation of the new City of London Law Courts is planned within 3 months of Practical Completion i.e. by end December 2027 and for the City of London Police by the expiry of the lease for 21 New Street, 31 March 2027.

3.2.2.2 Given the indication from Delva Patman Redler outlined below that there are injunctable Rights of Light which are most unlikely to be released by agreement within a reasonable time, it does not appear that the Rights of Light issues can be resolved without use of Section 203, and appropriation is therefore considered to be necessary to facilitate the carrying out of the Development.

**3.2.3 The development, redevelopment or improvement will contribute to the promotion or improvement of the economic, social or environmental wellbeing of the authority's area:**

3.2.3.1

- a) The proposed new combined court will allow court services to be relocated from the City of London Magistrate's Court (currently at 1 Queen Victoria Street) and the Mayor and City of London Court (a County Court, currently at Guildhall Yard) to the Development Site. The City Corporation (as landowner), in liaison with HMCTS is working to provide combined court accommodation for the Magistrate's Court and County Court to provide modern facilities which can harness modern technology to provide outstanding customer service, both virtually and through fewer, more suitable buildings better able to accommodate the necessary infrastructure. It is considered this will enhance the administration of justice, including in high-profile fraud and economic crime cases (including, potentially, international cybercrime). This will also help maintain the City's role as an international business centre by helping to consolidate the legal hub in the Fleet Street vicinity.

- b) The proposed new police station will support the vision to modernise and upgrade the justice system such that it works for everyone, doing so through the use of new technology, infrastructure, services, processes and ways-of-working. The police station will provide headquarters for the City of London Police including in its role as lead force for economic and cyber-crime and deliver operational efficiencies. Alongside the Court, the introduction of the Police Station would offer a substantial public benefit and contribute to reinforcing the area as a legal quarter.
- c) The commercial office building proposed for the eastern part of the Development Site will ensure the retention of some office space and contribute to meeting demand for new Grade A office space compliant with modern energy efficiency requirements, and contribute to the assembly of mixed uses at the Development Site.
- d) The Development includes public realm enhancements such as an extended new amenity space in Salisbury Square and generously proportioned accessible new east-west public routes through the site. This would connect Whitefriars with Salisbury Court with approximately 100% increase of dedicated public realm across the development. In addition, Salisbury Square would increase in size by 42%. There would be enhanced pedestrian permeability with generous, wider routes between Fleet Street, Whitefriars Street, Primrose Hill and Salisbury Square, and a new, significant view of St Bride's Church Spire from the north passage.
- e) The London Plan includes the following policies:
- i. Policy SD4 The Central Activities Zone – (CAZ) sets out the strategic priorities for the CAZ including the following:
    - The unique international, national and London-wide roles of the CAZ, based on an agglomeration and rich mix of strategic functions and local uses, should be promoted and enhanced.
    - The nationally and internationally significant office functions of the CAZ should be supported and enhanced by all stakeholders, including the intensification and provision of sufficient space to

meet demand for a range of types and sizes of occupier and rental values

- The distinct environment and heritage of the CAZ should be sustained and enhanced.
  - The CAZ as a centre of excellence and specialist clusters including functions of state, health, law, education, creative and cultural activities, and other more local Special Policy Areas should be supported and promoted.
- ii. Policy GG5 (Growing a good economy) states that those involved in planning and development must:
- Promote the strength and potential of the wider city region
  - Seek to ensure that London’s economy diversifies and that the benefits of economic success are shared more equitably across London
  - plan for sufficient employment and industrial space in the right locations to support economic development and regeneration
  - ensure that sufficient high-quality and affordable housing, as well as physical and social infrastructure is provided to support London’s growth
  - ensure that London continues to provide leadership in innovation, research, policy and ideas, supporting its role as an international incubator and centre for learning
- iii. Policy E1 (Offices) states that the unique agglomerations and dynamic clusters of world city businesses and other specialist functions of the central London office market, including the CAZ, should be developed and promoted, and improvements to the quality, flexibility and adaptability of office space of different sizes (for micro, small, medium-sized and larger enterprises) should be supported by new office provision, refurbishment and mixed-use development

3.2.3.2 London Plan Policy S1 supports the development of London’s “social infrastructure”. Paragraph 5.1.1 provides that for the purposes of Policy S1 “social infrastructure” includes “*criminal justice and emergency facilities*”.

3.2.3.3 The City of London Local Plan states:

Strategic Objective 1 – To maintain the City’s position as the world’s leading international financial and business centre

3.2.3.4 Paragraph 1.15 of the Local Plan states “It [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”

3.2.3.5 In conclusion the appropriation of the Main Development Site to enable the operation of Section 203 will facilitate the carrying out of the Development which will contribute to the achievement and improvement of the economic well-being of the City by helping consolidate the legal business cluster and the City’s role as a business centre. The environmental and social well-being of this part of the City will be promoted through the improvement of public realm and provision of accommodation for the better administration of justice and the City of London Police Force.

3.2.4 **There will be infringements of one or more relevant rights or interests which cannot reasonably be avoided:** Delva Patman Redler, the Rights of Light advisers appointed by the City Corporation in its capacity as landowner, have analysed the impact of the Development at the Main Development Site on the adjoining properties. Based on that advice there are 13 properties and 14 owners, with injunctable rights of light (See List of Affected Properties attached at **Appendix 4** to this Report). This is made up of 12 commercial properties and 1 residential property. Two owners have reached agreement. As regards the impacts in planning terms, issues of daylight sunlight and overshadowing were fully considered when the committee resolved to approve the consented scheme on 14 June 2021. That evaluation set out in the Planning Report concluded that there are a small number of major and moderate adverse impacts, but for many windows and rooms the impact is considered to be minor adverse or negligible. When considered against the wider benefits of the scheme, including the substantial improvements to Salisbury Square and sunlight to the square, these impacts are considered to be acceptable and in line with policy DM10.7 of the Local Plan.

**3.2.5 The easements to be interfered with cannot reasonably be released by agreement with affected owners within a reasonable time:**

3.2.5.1 Delva Patman Redler advise that it is not possible to make any further small alterations to the size or shape of the Development at the Main Development Site such as to have any meaningful impact on the rights of light position.

3.2.5.2 The exacting requirements of the combined court and the need to comply with the HMCTS design guide includes multiple stair cores, controlled and public circulation and a disposition of internal accommodation that has been carefully designed with an external envelope within the constraints of the London View Management Framework. This resultant design averts the risk of interference between judicial, jury staff, witnesses and the public that could result in contamination and hearings being adversely affected .

There are similar, exacting operational requirements of the City of London Police force that determine the disposition of internal accommodation and separation of specialised units, economic crime department, forensics, vulnerable witnesses etc within the blast hardened structure that defines the shape and massing of the building.

For these reasons any further shouldering of the upper floors of the court building and police headquarters is not possible without impacting the operational effectiveness of this infrastructure of national importance.

3.2.5.3 In deciding whether it is necessary to appropriate the Main Development Site so as to rely on Section 203 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.

3.2.5.4 The history of the negotiations between the City Corporation (as landowner) and persons whose rights of lights are infringed by the Development is that Delva Patman Redler were appointed in September 2019 to analyse the impact of the Development on 22 adjoining properties. 20 freehold owners and one long leaseholder of 20 impacted properties were approached. The owners of the other two properties were not approached because the City of

London Corporation own the freehold titles and it is understood no other party enjoys a right to light over the development site. Following surveyor appointment internal layouts were confirmed and the technical assessments updated. 6 properties were deemed to not be impacted by the development. Of these 7 properties, 6 adjoining freehold owners' surveyors have been notified the negotiation is closed. No further comment or concern has been raised by those neighbours and it is not expected they will do so in the future. The mutual release is being sought with the 7<sup>th</sup> property because it is also being redeveloped. The 14 remaining property owners, who are likely to suffer a material loss of light, have all been made an offer of compensation. The offers were calculated using the industry standard book value methodology with a multiplier. Delva Patman Redler have successfully agreed settlements with two rights holders. Delva Patman Redler refer to one counter offer made and state that the figure is "...grossly outside what we would advise is reasonable." Delva Patman Redler state that in the foreseeable future negotiations are most unlikely to result in agreements to release rights of light. Delva Patman Redler draw attention to the fact that it would be open to the owner of a neighbouring property to seek an injunction. Delva Patman Redler also draw attention to the fact that a firm of solicitors acting for a rights holders has stated that their client will have to consider their legal remedies. The remedies are not identified in that letter and could include making an application for judicial review of the decision to appropriate, or bringing a private law action for damages and/or an injunction. There is little or no incentive for rights holders to prioritise or commit resources (even where paid for by the developer) on promptly progressing settlements, whereas the developer's interests are in securing settlements promptly within the project programme, otherwise construction works are at risk of being halted by injunction Any injunction resulting in the suspension of construction works would significantly impact the public benefit that the development will provide and would exacerbate the backlog of judicial cases that the Ministry of Justice is seeking to recover. Delay to construction works would further impact the City of London Police force's effectiveness in fighting crime within the Square Mile in fighting fraud and economic crime where COLP are the nation's leading force. The new



headquarters for COLP will provide a resilient, state of the art headquarters that consolidates the facilities that existed at Snowhill, Wood Street and the ageing Bishopsgate station that does not provide the infrastructure and facilities for effective policing in the 21<sup>st</sup> century. These existing facilities were designed and built where national policing encountered completely different threats and potential risks to infrastructure in providing crime prevention. The new headquarters for the force will be designed to withstand a range of risks to policing including blast, chemical and biological threats and potential terrorist threats. The new headquarters will incorporate a completely modern custody suite designed to the latest Home Office standards. The remaining provision of internal accommodation will combine a co-location of different departments working across the force both nationally and locally in effectively and efficiently fighting major crime, particularly in the specialist areas of cyber, fraud and economic crime.

3.2.5.5 The need for the new City of London Law Courts to become operational at the earliest time is of also of importance. The ageing Mayor's and City of London Court, and the City of London Magistrates' Court currently provide a total of eight hearing rooms. The City of London Law Courts that will replace these sites will provide a total 18 hearing rooms, ten additional hearing rooms compared with existing court capacity, of which eight will be new additional Crown Court rooms. The new court building combines magistrates, civil courts and Crown courts which brings also operational efficiencies for HMCTS, by locating staff and resources into a single large location. It will also provide more modern facilities for court users, including lifts, wide corridors, access for wheelchairs and a range of other measures to make it more accessible for people with disabilities. Any suspension of construction works would delay access to the benefits of ten additional courtrooms and improved facilities for court users, placing a potential risk on future court performance for HM Courts & Tribunals Service who are currently committed to reducing the number of outstanding cases in the criminal justice system.

As reported by the Law Society, data released in April 2023 shows that problems in the criminal justice system are persisting, the Law Society of England and Wales has said. From February 2022 to February 2023 there was a 6% increase in the Crown Court backlog of outstanding cases, despite a 1% fall from January – February 2023 where the Crown Courts outstanding caseload rose by 3,539 cases from 57,539 in February 2022 to 60,898 February 2023. The continuing lack of progress to reduce the backlog makes it unlikely the government will achieve its target of cutting the number of cases waiting to come to court to 53,000 by March 2025. HMCTS management information reveals that there was an increase in the number of outstanding cases in the Magistrates' Court, undermining suggestions from government that the situation is improving.

- 3.2.5.6 In this case, Delva Patman Redler consider that there is a risk that a neighbouring owner/s may seek an injunction. The risk that an injunction may be sought causes great uncertainty and undermines the prospect of the scheme being delivered. On the basis of the Delva Patman Redler report there is also a very considerable risk that negotiations with affected owners will not be completed within a reasonable time, and that the programme for provision of much needed court and police facilities will be delayed or frustrated. In addition Delva Patman Redler advise that there are counter offers beyond reasonable market figures. The quantum of the counter offers is another indicator that agreement is not likely to be reached within a reasonable period.
- 3.2.5.7 That being the case, Delva Patman Redler consider it most unlikely that, in the foreseeable future, negotiations will result in agreements to release Rights of Light. For the reasons set out at paragraph 3.2.5.6, it is virtually inevitable that there will be extant Rights of Light in place long after the date when (if the critical path programme is adhered to) the construction of the Development would infringe such Rights.
- 3.2.5.8 The matters referred to by Delva Patman Redler at paragraphs 3.2.5.4, 3.2.5.6 and 3.2.5.7 of this report are set out in their letter of 12 September 1993 at **Appendix 5** of this report.

3.2.6 **The ability to carry out the Development is prejudiced due to the risk of injunction, and adequate attempts have been made to remove the injunction risks:** This criteria is considered met for the reasons set out at 3.2.5

3.2.7 **A decision to acquire or appropriate in order to engage section 203 of the Housing and Planning Act 2016 would be broadly consistent with government advice** given in the Department of Levelling Up, Housing and Communities Guidance on Compulsory Purchase (2019): the principles set out in the guidance as to whether a compulsory purchase order is justified reflect the criteria adopted by Court of Common Council and evaluated in this Appendix. It is considered that the evaluation and recommendation are consistent with the principles in the guidance; in particular there is a compelling case in the public interest for the provisions of section 203 to be engaged in order to facilitate the carrying out of a development which is desirable in the public interest.

3.2.8 **The use of the powers is proportionate in that the public benefits to be achieved so as to outweigh the infringement of human rights:**

3.2.8.1 The Human Rights Act 1998 requires the City Corporation to act in accordance with the European Convention on Human Rights (ECHR) in deciding whether or not to agree the Recommendations. Article 1 of the First Protocol of the ECHR provides that every natural or legal person is entitled to peaceful enjoyment of their possessions. Appropriation which engages Section 203 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.

3.2.8.2 However, the rights to peaceful enjoyment of possessions 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 (in relation to 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”.

- 3.2.8.3 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.
- 3.2.8.4 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 that the proposed appropriation in order to engage the Section 203 statutory override provisions amounts to a proportionate interference in all the circumstances. In this regard the fact that infringements cannot feasibly be reduced and the availability of compensation to those who are deprived of their Rights of Light are of relevance to the issue of proportionality. As regards the compensation sums, it is intended that all negotiated settlements and, where there is no settlement, all existing offers made to rights holders (as set out at **Appendix 5**), will continue to be honoured after any appropriation resolution made by your Committee. This matter is addressed in at Recommendation 3.
- 3.2.8.5 The public benefits arising from the redevelopment are set out above. The key benefits of the Development need to be balanced against the infringements are set out at paragraph 3.2.4 above and **Appendix 4**. 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.
- 3.2.8.6 The planning implications of the Development have been fully considered and the Development has been deemed acceptable.

**3.2.9 The developer has consulted with rights holders** regarding the engagement of section 203 wherever feasible and appropriate in the circumstances of the case: consultation has taken place as set out at paragraph 6 of the Report.

**3.2.10 The authority could acquire the land compulsorily for the purposes of the Development:** if the City Corporation did not already own the land, it would be able to acquire it using compulsory acquisition powers under Section 226 of the Town and Country Planning Act 1990