

| Committee(s):   | Date(s):         | Item no.            |
|---|------------------|---------------------|
| Planning and Transportation Committee   | 11 February 2025 |                     |
| <b>Subject:</b><br>Redevelopment of Bank Over Station Development – Site Bounded by King William Street, Cannon Street, Abchurch Lane & Nicholas Lane, London EC4   |                  | <b>Public</b>       |
| <b>Report of:</b><br>Planning & Development Director  |                  | <b>For Decision</b> |
| <b>Report author:</b> David Horkan and Fleur Francis  |                  |                     |
| <p><b><u>Summary</u></b></p> <ol style="list-style-type: none"> <li>1. This report seeks your approval in principle for the acquisition of land for planning purposes by agreement under section 227 of the Town &amp; Country Planning Act 1990 (the <b>TCPA</b>) (<b>S227</b>) enabling the operation of powers under Section 203 of the Housing &amp; Planning Act 2016 (the <b>HPA2016</b>) (<b>S203</b>) to facilitate the carrying out of the redevelopment of the Bank Over Station Development (Site Bounded by King William Street, Cannon Street, Abchurch Lane &amp; Nicholas Lane, London EC4) (the <b>Redevelopment Site</b>) (shown on the plan at <b>Appendix 2</b>).</li> <li>2. Transport for London (<b>TfL</b>) (the <b>Owner</b>), together with Helical and Places for London (the property company for Transport for London) (together Platinum KWS Development, the <b>Developer</b>), as owner and developer of the Redevelopment Site have asked if the City would be prepared to consider intervening by utilising the powers under S227 to enable reliance on the statutory authority conferred by S203. For this to occur it would be necessary for the City to acquire an interest in the Redevelopment Site, and the City’s compensation liabilities to be indemnified by the Developer.</li> <li>3. This report evaluates the request against the relevant criteria, concludes that (subject to satisfactory evidence that rights of light cannot be released by agreement) the other tests are met, and recommends agreeing the request In principle.</li> </ol> <p><b>Recommendation</b></p> <p>It is recommended that Planning and Transportation Committee authorise the acquisition of an interest in the Redevelopment Site by the City under S227 in order to engage powers under S203 for the planning purpose of facilitating the carrying out of the development (as described in paragraph 4 of the Main Report below) (the <b>Development</b>) and subsequent disposal of that interest to the Owner (or an associated company) under section 233 of the TCPA</p> <p><b>SUBJECT TO</b> the Town Clerk determining in consultation with the Planning and Development Director, City Surveyor and the Chairman and Deputy Chairman of the Planning and Transportation Committee that:</p> <ul style="list-style-type: none"> <li>• adequate attempts have been made by the Developer to remove injunction risks by negotiating release of relevant rights and interests by agreement and that those entitled to the rights are not prepared, by agreement (on reasonable terms and within a reasonable timeframe)</li> </ul> |                  |                     |

to permit infringements of those rights in time to achieve the development programme;

- a suitable Deed of Indemnity is in place; and
- suitable terms for the acquisition and disposal referred to above have been entered into between the City, the Owner and the Developer.

## Main Report

### Background

- 1) The City granted planning permission for a scheme to demolish the former building and redevelop with a new six storey office and retail building at the Redevelopment Site on 27 June 2014 under reference 14/00178/FULEIA (the **Original Development**). Implementation was initiated by TfL in 2017 as part of the Bank Station Capacity Upgrade Works. changes were approved on 12 July 2022 adding a floor and roof terrace under reference 21/00279/FULMAJ (the **Development**)
- 2) The Development would interfere with rights of light of a number of neighbouring property interests, as is relatively common for City redevelopment schemes. The Developer has been seeking to agree terms with the owners of affected properties (the **Affected Owners**) since 2022. The Developer has agreed settlement terms with 10 of the 11 Affected Owners (as set out in the list at **Appendix 4**). However, the Developer now considers that despite intensive effort, there is no realistic prospect that agreement will be reached with the remaining Affected Owner holding injunctable rights in time to enable the critical path to be met for December 2026 completion. The inability to remove the potential injunction risks associated with the rights of light by one remaining party is now the key impediment to securing an investment partner and the delivery of the Development within the construction programme to secure completion of the Development for December 2026. The City has considered the request and it is proposed that it assists in overcoming a potentially injunctable rights of light claim to help ensure the timely delivery of the Development as set out in the Recommendation, for the reasons set out in this report.
- 3) The planning permission for the Development is for the following (see **Appendix 3** for images):

Construction of a new office building at part basement levels, ground floor plus seven upper storeys with a roof terrace and retail uses at ground and mezzanine levels to provide office use [16,874 sq.m GEA] and retail use [395 sq.m GEA]
- 4) As set out in the Planning and Development Director's report to the Planning and Transportation Committee of 10 June 2014 and the delegated report of 12 July 2022, the Development was considered to be in substantial compliance with the policies that relate to it and in particular to support the strategic objective of the City to promote the square mile as the leading international financial and business centre.
- 5) In December 2016 Court of Common Council reaffirmed and updated arrangements to consider requests to engage the powers in S203 on a case by case basis. Consideration was delegated to the Planning and Transportation Committee, and it was clarified that wherever feasible and appropriate, the City would be expected to demonstrate that affected rights holders have been appropriately advised of the proposed resolution, made aware of any report, and provided with a relevant contact at the City to whom they can direct comments.

## Proposal

- 6) A right of light is an interest in land (i.e. an easement) which entitles a neighbouring landowner to enjoy light across a neighbouring site. Any development which interferes with that right would constitute a breach of the easement that would entitle the affected owner to claim an injunction preventing development or damages for the effect of the light lost as a result of the interference.
- 7) The risk that a person or persons entitled to a relevant right or interest may seek and/or obtain an injunction restricting the proposed Development can be overcome by engaging the provisions contained in S203 and thereby conferring statutory authority to carry out the works notwithstanding the interference with the rights to light. The operation of S203 is described in the Legal Implications section of this report.
- 8) The Developer has asked if the City would be prepared to consider acquiring an interest in the Redevelopment Site for the planning purpose of facilitating the carrying out of the Development, so as to engage the provisions of S203. Such interest would be effectively transferred back to the Owner (or an associated company) who would be able to proceed with the Development. The Developer's request is annexed at **Appendix 6**.

## Considerations

- 9) In making a decision as to whether to acquire an interest in the land for the planning purpose of the Development, the City must be satisfied that there is a compelling case in the public interest that the powers conferred by S203 be engaged in order that the building or use proposed can be carried out within a reasonable time. The criteria to be applied in deciding whether there is such a compelling case are set out and evaluated in **Appendix 1**. It is considered that subject to satisfactory evidence that rights of light cannot be released by agreement the rest of these tests have been met (subject to the conditions in the Recommendation being fulfilled). A decision as to whether the conditions are satisfactorily fulfilled is proposed to be delegated (as set out at paragraph 20).

## Proposed acquisition and disposal

- 10) The proposed terms are to be agreed by the Town Clerk in consultation with the City Surveyor and the Chair and Deputy Chair of the Planning and Transportation Committee.

## Legal implications

- 11) The City may acquire an interest in the land by agreement under Section 227 TCPA. Such acquisition must be for a purpose for which the City may be authorised to acquire land under Section 226 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.
- 12) 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.
- 13) 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 promotion or improvement of one or more of the economic, social or environmental well-being of their area.

The City would need to conclude that the acquisition would satisfy these tests to take the matter further. Advice on this is provided in part (iii) of **Appendix 1**.

- 14) If land is owned by a local authority and the local authority could acquire the land compulsorily for the purposes of the building or maintenance work, and where there is planning consent for the building or maintenance work, and the building or maintenance work is for purposes related to the purposes for which the land was acquired by the local authority, S203 provides that the carrying out of the building or maintenance work on that land is authorised notwithstanding that it involves interference with a relevant right or interest, which includes rights to light such as those under consideration in this case. Where interference with rights is authorised, compensation is payable. Such compensation is based upon the diminution in value of the dominant owner's interest, as per S204 HPA 2016.
- 15) The City would have the power to dispose of an interest in land acquired by agreement under S227 by virtue of Section 233 of the TCPA. It is not necessary to justify acquisition for the authority to carry out the development itself. A site may be acquired with a view to onward disposal. Disposal may take place under Section 233 in such manner and subject to such conditions as appear to the City to be 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.
- 16) The disposal must be at best consideration that can reasonably be obtained. If the Recommendation is accepted, the Town Clerk will determine (in consultation with the City Surveyor and the Chairman and Deputy Chairman of the Planning and Transportation Committee) the specific terms on which the acquisition and subsequent disposal are to be made and will only give their approval for the transaction if they are satisfied that this test will be met.
- 17) If the acquisition takes place as proposed the provisions of S203 will be engaged as:
  - i) There is planning consent for the Development
  - ii) the land will, at a time after 13<sup>th</sup> July 2016 have been acquired by a specified authority (such authorities include a local authority)
  - iii) under the powers conferred on it by section 226(1)(a) of the TCPA the authority (the City) could acquire the land compulsorily for the purposes of the building work permitted by the planning permission granted for the Development.
  - iv) The building work is for purposes related to the purposes for which the land was acquired.

### **Financial and risk implications**

- 18) In implementing S203 arrangements and disposing of any interest acquired under S227 back to the Owner, the City needs to be satisfied that all liabilities and costs arising from the arrangements (including any compensation liabilities falling to the City and potential costs associated with undertaking negotiations in relation to proceedings brought in the Lands Chamber can be met by the Developer. S204 of the HPA2016 provides that the liability to pay compensation (if not discharged by the Developer) would be enforced against the City.
- 19) This will be addressed through the Developer giving an Indemnity under which the Developer will indemnify the City against all matters arising from the transaction, the use of S203 and

the associated documentation. The Indemnity will include assurances that the highest offers made to date to each of the individual owners as compensation for any interference with their relevant rights or interests which may arise as a result of the Development will be honoured by the Developer. The Developer has agreed to provide this Indemnity to the City, however, the precise terms have yet to be agreed.

- 20) It is proposed that the Town Clerk (in consultation with the Planning and Development Director, City Surveyor and the Chairman and Deputy Chairman of the Planning and Transportation Committee) will ultimately determine whether the Indemnity and terms for acquisition and disposal are satisfactory and whether reasonable attempts have been made by the Developer to settle any claims which may be made by those holding the remaining rights and interests and that the risks associated with the property transaction are acceptable. There is however, detail provided on this point in part (v) of **Appendix 1**.

### **Consultees**

- 21) The City Planning Officer, City Surveyor, Town Clerk, Chamberlain and Comptroller & City Solicitor have been consulted in the preparation of this report. The affected properties which benefit from rights or interests likely to be subject to injunctable infringements are scheduled at **Appendix 4**, and all Affected Owners (other than those who have released their Rights of Light by completed Deeds) have been consulted as detailed in part (ix) of **Appendix 1**.

### **Conclusions**

- 22) It is considered that the potential acquisition of the Redevelopment Site for the planning purposes of the Development and the ability to use powers under S203 should be approved in principle (and taken forward if considered necessary) on the following basis:
- i) The Development will provide 16,874 sq.m of high quality office space.
  - ii) The Development will secure the efficient and productive use of a vacant site following demolition in 2017 to facilitate the Bank Station Capacity Enhancement Works
  - iii) The Development will provide 395 sq m of retail use, providing retail services and contributing to vitality and vibrancy of the pedestrian route and Abchurch Yard public realm in the vicinity of the Development
  - iv) The Development will enhance the Bank Conservation Area
- 23) All of the Considerations set out in **Appendix 1** have been properly addressed (subject to the Town Clerk being satisfied of the matters out at paragraph 20) and on balance, the outcomes of the Considerations support the Recommendation.
- 24) The Developer has explained that the remaining Affected Owners either: (a) are not prepared to relinquish those rights (by agreement on reasonable terms and within a reasonable timeframe); or (b) where in principle terms have been agreed, will not have entered into enforceable deeds of release within the necessary timeframe. It is recommended that the Town Clerk (in consultation with the City Surveyor and the Chairman and Deputy Chairman of the Planning and Transportation Committee) be delegated the responsibility for determining whether this is the case; and that the other conditions to the Recommendation have been met.
- 25) Affected Owners who have rights or interests infringed will be entitled to compensation.

### **Background papers:**

| <b>Papers</b>   | <b>Committee(s)</b>                             | <b>Date</b>     |
|---|---|-----------------|
| Rights of Light Issues Affecting Development – Update | Report to Court of Common Council               | 8 December 2016 |
|   | Report to Planning and Transportation Committee | 9 June 2014     |
|   | Delegated Report                                | 12 July 2022    |

**Appendices:**

1. Relevant Criteria and Evaluation
2. Redevelopment Site Plan
3. Image of Development
4. Schedule of affected properties
5. Cut back drawings
6. Developer’s request to use S203

**Contacts: David Horkan, Assistant Director (Development Management)**  
[david.horkan@cityoflondon.gov.uk](mailto:david.horkan@cityoflondon.gov.uk); Fleur Francis, Chief Lawyer  
[fleur.francis@cityofondon.gov.uk](mailto:fleur.francis@cityofondon.gov.uk)

## APPENDIX 1

### Relevant Criteria and Evaluation

1. In December 2016 the Court of Common Council approved updated arrangements for the consideration of requests made to the City to acquire land in order to engage the provisions of section 203. The City must be satisfied that there is a compelling case in the public interest that the powers conferred by S203 be engaged in order that the building or use proposed can be carried out within a reasonable time and in particular, that:
  - (i) There is planning consent for the proposed development;
  - (ii) Acquisition or appropriation and consequent engagement of S203 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;
  - (iii) The development, redevelopment or improvement will contribute to the promotion or improvement of the economic, social or environmental wellbeing of the authority's area and those benefits could not be achieved without giving rise to all or some of the infringements - therefore it is in the public interest that the land be acquired by the City or appropriated by them for planning purposes, so as to facilitate the development proposed or similar development.
  - (iv) There will be infringements of one or more relevant rights or interests as defined in section 205(1) of the HPA2016 or breach of a restriction as to user of land which cannot reasonably be avoided;
  - (v) 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 to the City);
  - (vi) 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;
  - (vii) A decision to acquire or appropriate in order to engage S203 would be broadly consistent with advice given in the DCLG Guidance on Compulsory Purchase (2015) (and any replacement thereof) so far as relevant (the most recent version of the guidance was published in October 2024 ("the MHCLG Guidance"));
  - (viii) The use of the powers is proportionate in that the public benefits to be achieved outweigh the infringement of human rights;
  - (ix) The developer and the City have consulted with rights holders regarding the engagement of S203 wherever feasible and appropriate in the circumstances of the case.

Each of these considerations is dealt with using the same enumeration below.

#### **(i) *Planning permission***

2. Planning permission was originally granted for the Development on 27 June 2014 for the demolition of the existing building and redevelopment with a new office building at part basement, ground and six upper floors with retail use at ground and mezzanine levels under reference 14/00178/FULEIA. This permission was implemented in 2017 as part of the

construction of the Bank Station Capacity Enhancement Works and Bank Station Box (approved under the London Underground (Bank Station Capacity Upgrade) Order 2015) which sits below and adjoining the Redevelopment Site. Since then, various changes have been permitted including for a seventh floor roof extension under reference 21/00279/FULMAJ.

**(ii) Facilitation of the Development by use of S203**

3. Based on the information submitted by the Developer, there is a critical path for the delivery of the Development arising from the need to finalise the funding agreement (subject only to resolving Rights of Light matters), which will in turn allow for the remaining construction works (i.e. the building contract) to commence by the end of February 2025, necessary to allow sufficient lead in for the building contractor to take over from the current enabling works contractor in Spring 2025. Failure to achieve this will result in a critical delay to the targeted December 2026 completion, with the main building contract unable to be progressed for an undetermined period of time. This is because funding will not be able to be secured until Rights of Light matters are resolved and thus will result in a partly constructed, hoarded site being left in situ potentially for a prolonged period with no clear resolution as to the completion date.
4. Delva Patman Redler, Rights of Light consultants to the Developer, have advised that although terms for release of Rights of Light have been agreed for all but one Affected Property, the Development is at risk due to one remaining actionable Rights of Light injury, and that an in-principle agreement to appropriate the Redevelopment Site for planning purposes, should it be necessary, would provide sufficient confidence the injunction risk can be removed pursuant to Section 203, should it be required, allowing the Development to proceed in accordance with its' critical path milestones.
5. Appropriation would remove the injunction risk and enable the Development to proceed.

**(iii) Development in the public interest due to promotion of the economic, social or environmental wellbeing of the City**

6. The Redevelopment Site is in Bank Conservation Area in the vicinity of a number of listed buildings. The recent history of the Redevelopment Site is that demolition of the buildings formerly on the Development Site occurred in 2017 as part of the Bank Station Capacity Enhancement Works (aimed at addressing serious congestion issues at Bank Station). It is considered desirable for the Development to progress and be completed as soon as possible, in particular helping to address the townscape gap arising from the demolition during the Bank Station Works and securing enhancement to the Conservation Areas. The proposed new King William Street façade was determined to make a better contribution to the Conservation Area than the former building, and the re-used and relocated Abchurch Street façade, being centred on the Abchurch Yard public space, was considered an appropriate setting to St Mary Abchurch. The design approach of the Development was found to enhance the Bank Conservation Area.<sup>1</sup> The Development would make efficient use of the Redevelopment Site, providing high quality office accommodation to meet demands of the City's commercial occupiers with an additional 2,265 sq.m gross of B1 office floorspace over the existing buildings (which comprised 14,609 sq.m as compared to 16, 874 in the Development.) The Development would also provide 395 sq m of retail floorspace providing an opportunity to add vibrancy and vitality to the pedestrian route and Abchurch Yard.<sup>2</sup> The Development is considered to be in substantial compliance with policies as discussed in more detail below
7. The London Plan includes the following relevant policies:

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<sup>1</sup> Paras 142 and 143 of Officer's Report to Planning and Transportation Committee 10 June 2014

<sup>2</sup> Para 42 of Officer's Report to Planning and Transportation Committee 10 June 2014



- i) Policy SD4 “Central Activities Zone” which says that the unique international, national and London-wide roles of the CAZ should be promoted and enhanced; that nationally and internationally significant office functions of the CAZ should be supported and enhanced; and that the distinct environment and heritage of the CAZ should be sustained and enhanced.
  - ii) Policy E1 “Offices” which says that increases in the current stock of offices should be supported in the Central Activities Zone (Policy E1B), and that clusters of world city businesses including the CAZ should be developed and promoted and supported by improvements to public transport connectivity and capacity (Policy E1C)
8. The City of London Local Plan 2015 includes the following relevant policies:
- i) Under “Implementation And Delivery” at paragraph 1.15, it states that the City 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.
  - ii) Strategic Objective 1 which is: “to maintain the City’s position as the world’s leading international 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, ...”
  - iv) Policy DM 1.3 which is “To promote small and medium sized businesses in the City” and states that the City will achieve this by encouraging office designs which are flexible and adaptable to allow for sub-division to create small and medium sized business units.
  - v) Policy DM 1.5 which encourages a mix of commercial uses within office developments which contribute to the City’s economy and character and provide support services for its businesses, workers and residents.
  - vi) Policy CS 20 which encourages the improvement of the quality and quantity of retail and the retail environment
  - vii) Policy CS 10 which promotes a high standard of design and sustainable buildings, streets and spaces, having regard to their surroundings and the historic and local character of the City and creating an inclusive and attractive environment
  - viii) Policy CS12 which is to: “conserve or enhance the significance of the City’s heritage assets and their settings, and provide an attractive environment for the City’s communities and visitors”
  - ix) 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 is not proceeding due to rights to light issues, the City may consider acquiring interests in land or appropriating land for planning purposes to enable development to proceed.”
9. The City of London’s Draft City Plan 2040 includes the following relevant policies:

- i) Strategic Objective S4 which states: “The City Corporation will facilitate significant growth in office development of the highest quality to meet projected economic and employment growth.”
  - ii) Policy S5 which seeks to improve the quantity and quality of retailing and the retail environment
  - iii) Strategic Policy S11 which states: “The City’s historic environment will be protected, celebrated and positively managed.”
10. In conclusion, the acquisition of the Redevelopment Site for planning purposes pursuant to S227, so as to engage S203, will facilitate the carrying out of the Development which will contribute to the achievement and improvement of the economic, social and environmental well-being of the City.
11. The key benefits of the Development are:
- i) the provision of 16,874 sq.m of high quality office space, which equates to 2,265 sq.m of net additional floorspace.
  - ii) the efficient and productive use of a vacant site following demolition in 2017 to facilitate the Bank Station Capacity Enhancement Works
  - iii) the provision of retail use, providing retail services and contributing to vitality and vibrancy of the pedestrian route and Abchurch Yard public realm in the vicinity of the Development
  - iv) enhancement of the Bank Conservation Area
12. If the Development does not proceed, the benefits identified above will not be delivered.
13. For the reasons given the Development is likely to contribute to the achievement of all three objects identified in S226(1)(a) of the TCPA. It would bring about the promotion or improvement of the economic, social and environmental well-being of the City’s area.
- (iv) *Infringement of rights by the Development cannot be reasonably avoided***
14. In terms of the history of negotiations, the Developer has advised the City that their specialist rights of light surveyors (Delva Patman Redler LLP – “DPR”) contacted Affected Owners in 2022. A schedule of the Affected Owners’ properties is provided in **Appendix 4** to this report
15. As a result of these negotiations, the Developer has successfully agreed terms for deeds of release with all but one of the Affected Owners. The Developer will honour the agreed terms of all such settlements (subject in each case to the necessary contracts being agreed).
16. At the City Corporation’s request, a cut-back analysis has been undertaken to ascertain how much of the Development’s massing would need to be removed to either retain the light or reduce the light by less than 1% in each room (which is considered the industry standard approach) to the remaining Affected Owner’s property (where a negotiated settlement has not been reached). A copy of the analysis is provided at **Appendix 5** which includes the detailed drawings.
17. The analysis demonstrates cutbacks would be required at fifth, sixth and seventh floors, representing a significant reduction in usable space to the Development - 3,446.2sqm GEA or c. 17% of the total GEA (19,796.5 sqm) which in respect of lettable space, represents a loss of 2,687sqm NIA or c. 20% of the total office NIA (12,918sqm). In particular:

- 17.1 Fifth floor - the fifth floor intervention would require the heritage facade mansard to be removed, meaning that the full reinstatement of the original facade (and its positive historic value) could not be achieved. The intervention would also reduce a portion of usable space on the fifth floor (189.2sqm GEA/ 152.1sqm NIA of office floorspace as a minimum).
- 17.2 Sixth and Seventh Floors - the interventions at sixth and seventh floor are extensive, coupled with the loss of roof plant, that would need to be re-provided at the sixth floor. These interventions would result in a loss of 717.6sqm GEA from the sixth floor and 1,167.2sqm GEA from the seventh floor (total 1,884.5 sqm GEA). Given these interventions would impact access, plant space and render the remaining areas unusable, both floors would need to be omitted from the Scheme. The full removal of these floors would result in a total loss of 3257sqm GEA or 2,535sqm NIA. In addition, the full removal of sixth and seventh floors would result in the loss of the external communal roof terrace of 289sqm GEA which would have served and added value to the entire Scheme.
- 17.3 The core position – it is noted the core position is fixed by the Load Bearing Regime governing the Development as an Over Station Development and so it would not be feasible to relocate this in response to a cutback which is part of the reason why the sixth and seventh floors would have to be omitted.
- 17.4 It is concluded that revising the Development in line with the cutback assessment would render the scheme undeliverable preventing delivery of the benefits identified in this Appendix.
18. It should be noted that the cutbacks to the Development shown in **Appendix 5** would remove injunctable interferences to the remaining Affected Owner's Rights to Light. The same cutbacks would also reduce or remove interferences with Rights to Light of other Affected Owners (including where negotiated settlements have been reached but not yet legally documented).
19. The City Corporation has met with the remaining Affected Owner (where no negotiated settlement has yet been reached) to encourage proactive engagement between all parties with a view to seeking agreement using the same methodology agreed by all other Affected Owners (a book value / multiplier approach). The remaining Affected Owner has indicated to the City Corporation that they are prepared to negotiate an appropriate level of compensation on this basis, but in the absence of final agreement the development remains at risk.
20. To date, all Affected Owners have had offers made to acquire their respective interests. All settlements agreed and best offers made to date would be honoured by the Developer. Affected Owners could also refer the level of compensation to the Lands Chamber.
21. The impacts in planning terms, of the issues of daylight, sunlight and overshadowing were considered when this Committee resolved to approve the Development in June 2014 and were considered in the delegated report in July 2022. The identified impacts were considered to be acceptable.

On the basis of the analysis set out above it is the view of officers that there will be infringements of rights to light which, given the site, the need to for appropriate frontages, and all other factors which led to planning consent being granted for the Development cannot reasonably be avoided.

**(v) *Rights cannot reasonably be released by agreement***

22. In deciding whether it is necessary to acquire an interest in land under S227 so as to engage the provisions of S203 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 on reasonable terms and within reasonable timeframes. The Recommendation seeks that the ultimate determination of this point be delegated to the Town Clerk (in consultation with the City Surveyor and the Chairman and Deputy Chairman of the Planning and Transportation Committee), should it be necessary

23. The Developer has asked the City to take into account the following:
  - 23.1 Despite the efforts of the Developer, the remaining negotiations with affected parties are proceeding slowly;
  - 23.2 The Developer considers that there is a real risk that no agreement will be reached with all Affected Owners in time to meet the critical path (as set out paragraph 3 of this Appendix) to enable completion for December 2026.
24. In making a determination on whether this criterion has been satisfied, the Town Clerk will have regard to the Developer's representations and to any relevant representations from Affected Owners received through the ongoing engagement referred to at paragraphs 35 and 36 below
25. The Developer is proposing to continue negotiations to seek agreement with the Affected Owners. However, at the time of preparing this report and Appendix, your officers do not have sufficient information to conclude that this criterion is met. Therefore the Town Clerk would need to be satisfied that reasonable attempts had been made by the Developer to settle the remaining rights of light interest. Importantly, if the Recommendation in this report is accepted, S203 will not be engaged unless an Indemnity is entered into. Such Indemnity will secure that any compensation liabilities will be met by the Developer and will include the commitment that the Developer will, on completion of an effective deed of release, honour the highest monetary offers that it has made to date to each of the individual owners for any injunctable right claims that could have arisen from the completion of the Development.

**(vi) Development prejudiced due to risk of injunction**

26. For the reasons set out above, the Development stands to be prejudiced by the risk of injunction. If the building contract could not proceed, due to the risk of an injunction from an Affected Owner, this would have an impact on the critical path and delivery of the Development to the target December 2026 completion date and result in an uncertain delivery date.

**(vii) Decision to engage S203 would be consistent with MHCLG Guidance**

27. The City has the power under section 226(1) of the TCPA to make an order to acquire the Redevelopment Site compulsorily. The advice given in the MHCLG Guidance should be taken into account in deciding whether to acquire land in order to engage the provisions of S203. At paragraph 12.3, the MHCLG 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 S203. Given that it is in the public interest that the Development should proceed (as discussed in part (iii) above), 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 Redevelopment Site should be acquired for planning purposes in order to engage the provisions of S203
28. A confirming authority would expect the acquiring authority to demonstrate that they have taken reasonable steps to acquire all of the land and rights included in the Order by agreement. Here, it would be appropriate to show the efforts undertaken by the Developer and in particular the attempts to acquire the relevant interests by agreement. The efforts

made have been discussed above and it is proposed a final decision on whether adequate attempts have been made to release rights of light by agreement be delegated. The Developer has confirmed that after any resolution, it would continue to settle compensation at the highest monetary offer made to each relevant party to date, and this requirement is to be contained in the Indemnity provided to the City.

29. The MHCLG Guidance also says (at paragraph 12.4) that when making and confirming an order, acquiring authorities should be sure that the purposes for which the compulsory purchase order is made justify interfering with the human rights of those with an interest in the land affected. These issues are considered below in part (viii).

**(viii) Public benefits associated with engagement of S203 outweigh infringement of human rights**

30. Human Rights issues arise in respect of the proposed arrangements. An acquiring authority should be sure that the purposes for which the Redevelopment 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, in accordance with the provisions of the Human Rights Act 1998 the City is required to act in accordance with the European Convention on Human Rights (the **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 S227, which engages S203 to allow interference with a relevant right or interest, 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.
31. 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.
32. 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.
33. 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 S203 powers amounts to a proportionate interference in all the circumstances. Central to the issue of proportionality is the availability of compensation to those who are deprived of their relevant right or interest.
34. The key public benefits arising from the Development are set out at paragraph 11 above. The planning implications of the Development have been fully considered and it has been deemed acceptable with planning permission being issued on 27 June 2014 and 12 July 2022.

**(ix) Consultation with Affected Owners**

35. The Developer has contacted the remaining Affected Owner where a negotiated settlement is outstanding. That Affected Owner was advised that the City had been asked by the Developer to consider acquiring an interest in the Redevelopment Site for the planning purpose of facilitating the carrying out of the Development, so as to engage the provisions of S203. The letters also briefly explained the effect of S203 and welcomed engagement on

any outstanding issues that the recipient may have. Engagement is ongoing at the date of preparation of this report.

36. The City wrote to all Affected Owners (other than those where Deeds releasing Rights of Light have been completed) regarding this report, notifying them that the report is being made with the Recommendation to engage S203 subject to the conditions. Your Committee will be updated regarding any representations received.