

APPENDIX C

Appropriation of the land (shown edged black on the plan) at Appendix B for purposes set out in s226 of the Town and Country Planning Act 1990

Background to appropriation

1. Under section 122(1) of the Local Government Act 1972 the council may appropriate land for any purpose for which it is authorised to acquire land when the land is no longer required for the purposes for which it is held.
2. Under section 226(1)(a) and 227 of the Town and Country Planning Act 1990 the Council may acquire land if they think the acquisition will facilitate the carrying out of development, re-development or improvement on or in relation to the land. This includes development of the sort contemplated in the regeneration of Elephant and Castle. The power in section 226(1)(a) is subject to subsection (1A) of section 226. This provides that the acquiring authority must not exercise the power unless it considers the proposed development, redevelopment or improvement is likely to contribute to achieving the promotion or improvement of the economic, social or environmental well-being of the area for which the acquiring authority has administrative responsibility. There are clear economic social and environmental and social benefits associated with the delivery of the regeneration proposals for Elephant and Castle referred to in the main Report. These will transform the economic and social prospects for the area as well as resulting in considerable environmental improvements. Accordingly the council may appropriate land for the purposes of the development proposals land that it already owns if that land is no longer required for the purposes for which it is held. The land shown on the plan at Appendix B is no longer required for its current purposes for the reasons set out below and is not needed in the public interest for those purposes. The land can therefore be appropriated from its current use. As the appropriation will facilitate the Elephant and Castle development proposals it may be appropriated for planning purposes.
3. Where land has been appropriated for planning purposes section 237 of the Town and Country Planning Act 1990 (power to override easements and other rights) the erection, construction or carrying out or maintenance of any building or work on the land (by the council or a person deriving title from the council) is authorised if it is done in accordance with planning permission, notwithstanding that it interferes with certain private rights such as restrictive covenants and easements. As a consequence of the amendments made by the Planning Act 2008 Schedule 9, paragraph 4(1), the power to override easements and other rights now also applies where the use of the land which has been appropriated would otherwise involve interference with a third party right, such as a restrictive covenant. The effect of triggering section 237 is that private rights are effectively overridden and converted into a claim for compensation. The level of compensation for interference with rights or breach of restrictive covenant is assessed on the basis of the loss in value of the claimant's land as a consequence of the interference or breach of covenant. An important consequence of the operation of Section 237 is that a claimant cannot secure an injunction, to prevent the development from going ahead - as indicated above, their remedy is a claim for compensation.

4. Prior to developing land it is usual practice to make prudent enquiries of what rights might exist over the land, this will involve inspecting the land to see if there are any obvious rights and checking land ownership information. However, some rights may not be apparent from inspection and historic ones may not always be recorded at the Land Registry. The application of the power to override rights contained in s237 therefore mitigates this risk.
5. The right to claim compensation for the depreciation in value caused by the loss of right is enforced against the owner of the land but if that owner does not meet this obligation then the compensation claim can be enforced against the local authority.

Rationale for appropriating the subject site

6. The majority of the subject site contains a former social housing estate that is currently held by the Council for housing purposes. As a result of the Estate coming to the end of its economic life, the dwellings have been demolished or are being demolished. The remainder of the land (shown hatched) towards the north-west corner is the former Elephant Park an area of open space that is currently held for leisure purposes. That use ceased some years ago; play equipment that was formerly on the land was relocated elsewhere and access to the land by the public at large has been stopped up for some time. In accordance with Section 122 (2A) of The Local Government Act 1972 the council has advertised its intention to appropriate the land for two successive weeks in January 2013 and no observations were received. The land therefore is longer required in the public interest to be held for leisure purposes.
7. The entire area of land shown at Appendix B is included within the Regeneration Agreement dated 23 July 2010 between the London Borough of Southwark and Lend Lease (Elephant & Castle) Limited. The purpose of this Agreement is to regenerate the area with new housing, commercial and community accommodation and public realm including an urban park. The council's Planning Committee on resolved on 15 January 2013 to grant consent to an outline planning application that provides for this and includes all the land within Appendix B.
8. The land identified at Appendix B is no longer required to be held for housing and leisure purposes. As indicated above, the land is now required to be held for planning purposes to facilitate the redevelopment proposals associated with the outline planning permission.
9. The appropriation of the land for planning purposes will facilitate its regeneration as the risk of persons with the benefit of third party rights being able to obtain injunctions to stop the regeneration will be negated. The existence of such potential rights provide a real risk to the ability of the proposed regeneration proceeding. However, as set out above, the beneficiaries of such rights will be entitled to claim compensation based on the diminution in the value of their land as a result of their rights being overridden.
10. The appropriation of the land whilst denying the beneficiaries of any third party rights over the land the ability to frustrate the regeneration of the land will not take away their ability to claim for compensation in respect of any diminution in the value of their land as a result of their rights being overridden.