

## APPENDIX E

### **Appropriation of the land (shown edged black on the plan) at Appendix D 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 subject contains the former Castle Day Centre a property that has been vacant for a number of years following cessation of the former use. It is currently held by the council for housing purposes.
7. The council has contractually committed to the United Reform Church the owner of the Crossways Church in New Kent Road to use this site to provide a replacement church pursuant to its obligations under section 2 of the Land Compensation Act 1961 and the Regeneration Agreement with Lend Lease to regenerate the area on which the existing church stands. The council has lodged a planning application for the construction of a new church on the land.
8. The land identified at Appendix D is no longer required to be held for housing purposes. As indicated above, the land is now required to be held for planning purposes to facilitate the redevelopment proposals associated with the construction of the new church as part of the regeneration proposals for the wider area.
9. The appropriation of the land for planning purposes will facilitate its redevelopment as the risk of persons with the benefit of third party rights being able to obtain injunctions to stop the redevelopment will be negated. The existence of such potential rights represents a real risk to the ability of the proposed redevelopment proceeding. However, as set out above, 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.