

Item No. 16.	Classification: Open	Date: 18 January 2022	Meeting Name: Cabinet
Report title:		Bankside Yards - acquisition for planning purposes	
Ward affected:		Borough and Bankside	
Cabinet Member:		Councillor Helen Dennis, Climate Emergency and Sustainable Development	

FOREWORD – COUNCILLOR HELEN DENNIS, CABINET MEMBER FOR CLIMATE EMERGENCY AND SUSTAINABLE DEVELOPMENT

This report proposes that the Council acquires a temporary interest in the site of the former Ludgate House, the Airspace Land, and site of the former Sampson House in order to facilitate the consented development at Bankside Yards (Blackfriars). A mixed-use net-zero scheme, which will deliver new public realm, affordable housing, affordable workspace, a new cultural offer, and a venue dedicated to the LGBTQ+ community.

The Council recognises that if the scheme proceeds the rights of light of some nearby owners and occupiers will be affected, and compensation will be payable in respect of any interference. The acquisition recommended by this report is for planning purposes and will enable the rights of third parties to be overridden, whilst not affecting their entitlement to compensation. This will reduce the risk of delays to the development following the breakdown of negotiations around the amounts of compensation between some of the relevant parties and the threat of injunctions being used by three affected owners, which could delay or prevent the consented scheme from proceeding.

The proposal is consistent with legal and policy tests set out in the Town & Country Planning Act 1990 and the Housing & Planning Act 2016, and the report explains why it is necessary to depart slightly from the Council's own policy on the use of overriding powers.

The proposal is underwritten by the developers, Ludgate House Ltd. and Sampson House Ltd. ensuring that there is no financial risk to the Council.

Although consultation with local owners and occupiers is not required by law, all owners and occupiers likely to be affected were notified and their views have been incorporated into the report.

This report proposes that we proceed with the acquisition, delegating power to the Director of Planning and Growth to finalise the detailed terms and conditions for the transactions and indemnity agreements, and to deal with any subsequent compensation claims pertaining to third party property rights.

RECOMMENDATIONS

That the Cabinet agrees

1. The Council entering into an agreement with Ludgate House Limited (LHL) for
 - a) The acquisition by the Council of the freehold of the site of the former Ludgate House (title number TGL62703), shown outlined on the plan at Appendix A, and simultaneous grant by the Council to LHL of a 999-year lease of the same site. The acquisition will be under section 227 of the Town and Country Planning Act ("TCPA 1990") for the purpose of facilitating the carrying out of development, redevelopment or improvement on or in relation to that land; and
 - b) The acquisition by way of an assignment to the Council of LHL's leasehold interest in the Airspace Land (title number TGL54167), shown outlined on the plan at Appendix B, and simultaneous granting by the Council to LHL of a 249-year sub-lease of the same site. The acquisition will be under section 227 of the TCPA 1990 for the purpose of facilitating the carrying out of development, redevelopment or improvement on or in relation to that land; and
 - c) A Put and Call Option between the Council and LHL in relation to the site of the former Ludgate House and the Airspace Land, on the principal terms set out in the report.
2. The Council entering into an agreement with Sampson House Limited (SHL) for
 - a) The acquisition by the Council of the freehold of the site of the former Sampson House (contained within title number TGL138850), shown outlined on the plan at Appendix C, and simultaneous granting by the Council to SHL of a 999-year lease of the same site. The acquisition will be under section 227 of the TCPA 1990 for the purpose of facilitating the carrying out of development, redevelopment or improvement on or in relation to that land; and
 - b) A Put and Call Option between the Council and SHL in relation to the site of the former Sampson House on the principal terms set out in the report.
3. That as a pre-condition to the transactions referred to in 1 and 2 above, LHL and SHL enter into agreements, with financial security arrangements, to fully indemnify the council against any costs arising from these arrangements, including, but not limited to, the payment of compensation.
4. That the Council's intention in acquiring the interests under section 227 of the TCPA 1990 is to enable third party rights that exist over the site of the former Ludgate House, the site of the former Sampson House and the

Airspace Land to be overridden pursuant to section 203 of the Housing and Planning Act 2016 (“HPA 2016”).

5. To delegate to the Director of Planning and Growth authority to:
 - a) Agree detailed terms and conditions for the transactions referred to in 1 and 2 above and to instruct completion of the legal formalities
 - b) Agree detailed terms and conditions for the indemnity agreement referred to in 3 above and to instruct completion of the legal formalities.
 - c) Subject to completion of the agreements referred to in 1, 2 and 3 above, pay compensation properly claimed where due to third parties arising from the interference of their rights over the former Ludgate House site, the former Sampson House site and/or the Airspace Land in accordance with section 204 of HPA 2016;
 - d) Defend or settle (as appropriate) any compensation claims referred to the Lands Chamber of the Upper Tribunal in respect of rights that are overridden due to the exercise of the Council’s powers and to take all necessary steps in respect of any other legal proceedings that relate to the use of the aforementioned powers to override third party private rights over the former Ludgate House site, the former Sampson House site and/or the Airspace Land.

BACKGROUND INFORMATION

6. This report deals with a request from LHL and SHL, collectively referred to as “the Developer”, for the Council to take action to engage certain statutory powers in order to facilitate the delivery of the Bankside Yards redevelopment scheme, referred to as “the Scheme”.

Summary

7. It is not unusual for a property owner to enjoy rights over another party’s property, and these rights can interfere with the delivery of beneficial development projects.
8. In appropriate cases, if certain conditions are met, the Council can take advantage of legislation that allows the Council to override the property rights, which are then converted to a claim for compensation. Interference with these rights would no longer be actionable by way of an injunction and so the development project should be able to proceed.
9. The Council can use this power in the delivery of its own development projects (which it has done on several occasions), or to unlock schemes being promoted by other organisation (which it did most recently with the Canada Water Masterplan and before that the Elephant and Castle project).

10. The Council has a policy for dealing with requests from third parties to use its powers, which includes a set of principles against which to assess requests. Whilst the policy was prepared in relation to the use of powers under Section 237 of the TCPA, (since superseded by S203 of the HPA 2016) it remains applicable and relevant to Cabinet's consideration of use of the S203.
11. The Council recently received a request from the Developer in relation to the Scheme. This report explains how the request meets the statutory conditions for the acquisition of land for planning purposes. It also explains why in this case it is acceptable to depart slightly from the Council's own policy on the use of its overriding powers.
12. Should Cabinet be minded to agree the report recommendations, that will facilitate delivery of the Scheme's many public benefits including:
 - a) An in lieu affordable housing payment of at least £69m (subject to viability review and indexation this could rise to circa £100m) as well as 37 onsite affordable homes.
 - b) Borough CIL of £9.1m and Mayoral CIL of £3.3m; a contribution of £500k to the community project bank; construction apprenticeship training for a minimum of 43 local people; the provision of affordable workspace; and a commitment that 10% by value of goods and services for the development of the Scheme be procured locally.
 - c) A package of extensive public realm improvements that will see around half of the ground floor area of the site open to public access; creation of new east west pedestrian and cycle routes across the site; refurbishment of a section of railway arches; and, the setting out of a new public square and a public garden.
 - d) Provision of two cultural spaces, one that will provide a range of benefits to the LGBTQ+ community around the themes of social, cultural, wellbeing, support and advice.
 - e) The Scheme comprises a mix of uses including residential, employment, leisure and cultural space that ultimately will deliver 341 new homes, space for an estimated 3,700 (full time equivalent) jobs and a hotel.
13. The impact of the recommendations will fall on owners of property rights who will have their ability to stop the Scheme by serving an injunction overridden. They will instead be able to claim statutory compensation.
14. This overriding will apply to all property rights impacted by the development, but it is considered rights of light are the primary concern. To date the Developer's rights of light consultant has identified 40 owners of rights of light who will be significantly affected by the development.

Context

15. The Bankside Yards project has planning consent for a substantial mixed-use development. Appendix D contains a description of the Scheme, information on its relevant planning history, and sets out the many public benefits the Scheme will deliver.
16. Delivery of the Scheme will require a substantial financial investment of several hundred million pounds. To commit to such an investment the Developer and its investors have to have the confidence that the Scheme can be delivered and will not be frustrated.
17. The Scheme will result in new higher buildings in the locality and their construction will reduce overall daylight and sunlight available to some existing properties locally. This was identified and carefully considered by the Planning Committee in determining the planning applications for the Scheme. The extent of interference to daylight and sunlight was not considered to be of such severity to cause the planning applications to be refused.
18. The planning application process in general does not (and is not meant to) consider the private rights which may exist over one property in favour of another property and which may be enforced by one property owner against another. Such rights can take the form of (for example) a private right of way over one property in favour of another; a restrictive covenant preventing something being done on a property to the benefit of another property; or a right of light across one property in favour of another property. As will be set out in this report, for the Scheme to go ahead, some interference with rights of light which exist over the Scheme site in favour of other land would need to occur. Interference with other property rights might also occur.
19. Where a property right is interfered with the person benefitting from the right can apply to the court for an injunction to prevent the interference. If the court deems it appropriate, the court can order action to be taken to remove that interference; or the court may award monetary damages instead. Beneficiaries of the rights do not need to make any application to court ahead of the work causing or potentially causing interference commencing. Indeed, they can if they want, wait until after completion of the work. This therefore presents a significant risk to the Developer - that having invested in one or more buildings it is subsequently required by the court to reduce the height of or remove the building(s) concerned or having substantial damages awarded against it. This is an unacceptable risk for the Developer and makes financing the Scheme problematic.
20. Parliament has recognised that the issues described in the previous paragraph can prevent desirable schemes proceeding. Through the TCPA 1990 and subsequently restated in the HPA 2016, it has given councils (amongst others) a mechanism to override such rights, whilst still

giving beneficiaries a right to claim financial compensation for infringement of their rights. Section 203 of the HPA 2016 allows rights to be overridden if certain pre-conditions are met, one of which is the vesting or acquisition of land in a local authority. Under section 204 of the HPA 2016, the holder of the right is entitled to compensation if they suffer loss as a result of the infringement.

Property rights potentially interfered with by the Scheme

21. In this case it is rights of light, and in some instances potential rights of light, over the Scheme site in favour of adjacent properties, which have been identified as the primary concern.
22. A right of light is enjoyed by one property against another. It can arise either through express grant of the rights or through long use i.e. by the light travelling to a window in a building for many years across a particular route. The latter category is relevant here.
23. At the start of the project the Developer made the commercial decision to twin track commencement of construction whilst negotiating the release of rights of light with rights owners.
24. The Developer has appointed GIA to undertake rights of light analysis. GIA initially identified a group of neighbouring interests as those most likely to have rights of light that might be affected. Starting in late 2017 a programme of site surveys established that 40 neighbours will be materially affected parties and negotiation of rights of light releases began.
25. Initial progress was good with offers being made in the majority of cases in November 2019. However, more recently negotiations and further settlements have stalled and three owners have threatened Court proceedings to protect their rights by seeking declaratory relief as to the extent of their rights, injunction to prevent any interference with their rights and/ or substantial damages.
26. In some cases the Developer's continuing attempts to agree terms for release of any rights in return for payments of compensation have not been successful. There are still a category of neighbours who consider the infringements to their rights are significant, i.e. they could not be classed as minor or trivial in nature. As such, without the use of the overriding powers in section 203 of the HPA 2016 the holders of those rights (or any one of them) could potentially seek and obtain an injunction to prevent the Scheme from proceeding.
27. The developer has requested that the Council utilise its available powers to override all property rights that may be interfered with by the Scheme, to enable the Scheme to proceed. In the event that the Council does exercise its powers, the Developer has committed to continue the ongoing negotiations and honour all offers made.

KEY ISSUES FOR CONSIDERATION

The legal and policy framework in respect of overriding property rights

28. Cabinet is directed to Appendix E where the relevant legal and policy framework in respect of overriding property rights is set out in detail. It is important that Members review carefully the relevant legal and policy tests in Appendix E, which must be satisfied before the Council can utilise its powers to override rights.
29. Cabinet will note among other aspects:
 - a) the key tests set out in sections 226(1)(a) and 226(1A) of the TCPA 1990, including the need to satisfy the well-being test in section 226(1A) (paragraph 1 of Appendix E);
 - b) the pre-conditions to the engagement of section 203 of the HPA 2016 (paragraph 5 of Appendix E);
 - c) the list of seven considerations that the Council should address in deciding whether to override rights, including whether it is necessary to interfere with the rights to allow the Scheme to proceed and whether there is a compelling case in the public interest for the interference with the rights (paragraph 8 of Appendix E); and
 - d) the Council's June 2016 policy on the use of the overriding powers (paragraph 9 of Appendix E).
30. As to the June 2016 Council policy, as set out in detail in paragraphs 11 to 16 of Appendix E, in this case it is necessary for Cabinet to consider whether there should be a departure from the principle that the powers should only be used when genuine negotiation with affected persons has failed (principle (d)). To insist on the Developer getting to the point of failure of negotiations with all affected parties in this case is not considered reasonable given the number of potentially affected interests. It should be noted that agreement in principle had been reached with many of the more affected owners but negotiations have stalled, and there have been threats of Court applications from three affected owners.
31. The potential departure from principle (d) of the policy has been notified to property owners and occupiers in the locality and representations were invited from them. This was done by way of a covering letter with a detailed briefing note. 638 properties were contacted (this being more addresses than GIA report may be adversely affected, to include all units within a block where any one unit may have rights). 15 parties responded to the letter. A summary of the responses received and the Council's response to the main points taken by those objecting is at Appendix F.
32. In brief, the responses highlighted the following concerns: (i) that this was

the first that the person was aware of potential rights; (ii) a typographical error in the paragraph numbering led a few people to query whether text was missing; (iii) that it was incorrect that rights holders had delayed in negotiating settlements or were holding out for unreasonable sums; (iv) the period for responses was not long enough; (v) more information required as to implications for residents; (vi) objections to the planning decisions taken to redevelop the site; (vii) delays regarding the Developer's offer to install glazing on balconies at Falcon Point; (viii) unfair that all residents should be affected by failed negotiations of just a few parties; (ix) the temporary acquisition seems devious/a sham; (x) use of powers is premature and negotiations should continue; (xi) it is more than a minor departure. Correspondence has also been received from lawyers acting on behalf of the three parties threatening Court proceedings. The responses from these parties are more detailed and are summarised (and the points raised responded to) within Appendix F.

33. Having carefully considered them all, it is not believed that any of the responses received contain sufficient reasons not to proceed with the recommendations in this report.
34. Cabinet will also note (among other aspects) from Appendix E:
 - a) that once land has been acquired by the Council for planning purposes it may be disposed of in accordance with the terms of section 233 of the TCPA 1990;
 - b) there is a need for the Council to consider the human rights of those affected, including: Article 1 Protocol 1 Convention rights (peaceful enjoyment of possessions); Article 8 Convention rights (the right to respect for private and family life, the home and correspondence); and Article 6 Convention rights (in the determination of civil rights and obligations, everyone is entitled to a fair and public hearing); and
 - c) the need for the Council to comply with the public sector equality duty ("PSED") under section 149 of the Equality Act 2010.

The legal acquisition process to override property rights

35. The previous section and Appendix E set out the legal context. As one of the requirements for section 203 of the HPA 2016 to be engaged is that the land must have been acquired by the local authority (in this case for planning purposes), the Council will need to acquire a legal interest in the site.
36. Appendix G is a plan showing the greatest extent of the planning boundary for the Scheme. From this, it can be seen the site is made up of three sections. Land to the west of the railway viaduct; the arches within the railway viaduct and associated circulation space; and, land to the east of the railway viaduct.

37. The nature and extent of development on the railway arch land is such that it will not interfere with rights of light. The Developer is also confident the land is not the subject of other third party rights. That being the case, it is not necessary to include the arches in the acquisition.
38. The land to the west of the viaduct is in two parcels:
 - a) The site of the former Ludgate House is owned freehold by LHL (under title TGL62703), shown on the plan at Appendix A. It is proposed to transfer the freehold of this parcel to the Council with the immediate grant by Southwark of a 999-year lease back to LHL.
 - b) LHL occupies the Airspace Land (title number TGL54167), shown on the plan at Appendix B, by way of a 250-year lease from 2019. It is proposed to assign this lease to the Council with the immediate grant of a 249-year sub-lease to LHL.
39. The land to the east of the viaduct is the site of the former Sampson House, shown on the plan at Appendix C. This is owned freehold by SHL (and forms part of the title TGL138850) and it is proposed to transfer the freehold to the Council with the immediate grant by the Council of a 999-year lease back to SHL.
40. The freehold transfers between the Council and LHL and SHL and the assignment from LHL to the Council will be the subject of put and call option agreements allowing the parties to require a transfer of the freeholds and the Airspace Land back after a minimum period of 20 working days without penalty. This is because the purpose of the land transfers is to enable the provisions of sections 203 – 205 HPA 2016 to apply to the land and not for the Council to retain a legal interest in the land.
41. This structure ensures the interests being transferred to and from the Council have a nominal value. The transfers are only effected subject to the put and call option, which strips out any value. The transfer and leaseback for nil consideration will therefore satisfy the best consideration requirements of s233 of TCPA 1990 and s123 of the Local Government Act 1972.
42. The Council will acquire a legal interest in the land for the purposes of s203 HPA 2016 but the arrangements will result in neither any financial detriment nor financial benefit.
43. To further protect the Council's position, it shall be a pre-condition of any property transfer between the Council and the Developer that the parties enter into an indemnity agreement covering the matters set out in principles (e), (f) and (g) of the policy framework for overriding property interests. The indemnity will be backed by financial guarantee provisions.
44. Cabinet is asked to agree this general approach to the structure of property

transactions between the Council and the Developer and to delegate to the Director of Planning and Growth authority to negotiate detailed terms and to conclude the legal formalities.

Community, equalities (including socio-economic) and health impacts

Human rights implications

45. The overriding of property rights recommended in this report will interfere with Article 1 First Protocol Convention Rights. In the context of rights of light the interference would be significant for many of the properties affected ie the infringement would be substantial enough that the relevant rights holder could seek an injunction to prevent the Scheme from infringing their rights. At this stage, no infringement has been identified for any other class of property right.
46. Article 1 of the First Protocol allows for interference with rights if it is in the public interest and in accordance with the law. Therefore, the use of planning powers as contemplated by this report is lawful in Article 1 terms provided the Council strikes a fair balance between the public interest and the private rights protected by Article 1.
47. In considering this balance it is relevant that compensation is available to persons affected by the interference with their rights of light. Members will also want to consider the very considerable public benefits that will arise from the Scheme as referred to in Appendix D. Officers are of the view that there are compelling benefits in the public interest which, when weighed against the private rights of individuals, justify the interference with Article 1 rights in this case, and that such interference is proportionate.
48. The overriding of rights held by adjacent properties would also interfere with Article 8 rights. Interference with the rights of light may have an adverse effect in Article 8 terms on home and family life. Article 8 does though, allow for interference if it is proportionate and in the public interest. In terms of rights of light, it is considered that the impact will not be so great as to result in an interference with Article 8 rights, but if there were an interference then it would be proportionate and justified. Officers are of the view that the public benefits of the Scheme, taken together with the compensation payable in respect of the overriding of rights, mean that the interference with rights in this case is proportionate and in the public interest.
49. As regards Article 6 Convention Rights (right to a fair and public hearing), disputes as to compensation can be referred for hearing by the Lands Chamber of the Upper Tribunal. It should also be noted that those whose rights are affected have been notified and offered the opportunity to make representations to the Council. For these reasons, Article 6 is complied with.
50. Officers have also considered whether there is any infringement of

Articles 9 (freedom of thought, conscience and religion), 11 (freedom of peaceful assembly and association) or 14 (freedom from discrimination) of the Convention; in each case it is considered that there is no infringement.

Public Sector Equality Duty

51. In considering the recommendations herein the Cabinet must have due regard to the possible effects of them on any groups sharing a protected characteristic in order to discharge its PSED. This is an ongoing obligation.
52. The decision before the Cabinet is whether to acquire land in order to engage section 203 of the HPA 2016 to override property rights to enable a consented planning scheme to be implemented. This is discussed in detail in Appendix H to this report.
53. Careful consideration has been given to whether the overriding of property rights will be consistent with the PSED and its goals. There is a wide range of residential property types, and some commercial properties, among those that benefit, or potentially benefit, from the rights in question. The Scheme would infringe those rights.
54. It is not considered that infringement of these property rights would affect members of any protected characteristics group differently from the rest of the general population. There are no types of accommodation that would be particularly accommodating of people with protected characteristics such as elderly care homes or houses for partially sighted persons. There is no reason to think that the infringement of rights would have a disproportionate impact on any protected characteristics group including age or disability. Whilst some of the rights will be held by some people with protected characteristics, it is not considered this effect will be disproportionate on such persons or that there will be any discrimination or inequality of impact.
55. Equality and health analysis demonstrates that the policy shows no potential for discrimination and the Council has taken all appropriate opportunities to advance equality of opportunity and foster good relations between people with different protected characteristics.
56. As is set out elsewhere in the report, compensation is payable to persons whose rights have been affected. In making its decision the Cabinet must weigh up the benefits that will arise from the recommendations against the adverse impacts.

Whether the use of the Council's powers would be justified

57. This question involves testing the proposed use of the powers against the legal and policy guidance framework set out in Appendix E. Members are referred to Appendix H of this report, where that exercise has been undertaken in detail.

58. Cabinet will note among other aspects from Appendix H that it is considered that:

- a) the tests set out in sections 226(1)(a) and 226(1A) of the TCPA 1990 are satisfied;
- b) overriding the rights would facilitate the carrying out of the Scheme and the public benefits it would bring;
- c) those public benefits are very significant and would outweigh the impacts on the rights of those parties who hold the rights;
- d) it is necessary to interfere with the rights in this particular case for a number of reasons as set out in paragraph 6 of Appendix H;
- e) there is a compelling case in the public interest to override the rights on the basis of the very significant public benefits that would accrue from the Scheme. In particular, there is no reasonable alternative way of developing the site to achieve the outputs of the consented scheme without interfering with third party rights.
- f) there are good reasons for depart from principle (d) of the Council's 2016 policy on the use of overriding powers (i.e. not insisting on negotiations having failed with all affected rights holders) in this particular case; and
- g) the principles of the June 2016 policy are met (or the particular circumstances of this case justify a departure from principle (d)).

Climate change implications

59. The Scheme has planning consent and was considered against the Council's full range of environmental policies. The environmental benefits of the development are included in the description of the scheme at Appendix D.

Resource implications

60. Implementation of the recommendations in this report will require some staff input. These will come from Regeneration and Legal. Where rights are interfered resulting in a loss in value to the affected property, the owner is entitled to compensation for that loss. Liability for compensation rests in the first instance with the Developer but if for some reason payment is not made then the owner can claim compensation from the Council. Implementation of the recommendations is conditional on the Developer indemnifying the Council in full against any costs, including staff costs and compensation payments arising and a draft indemnity agreement has been provided by the Developer. Therefore, there will be no negative cost implications but the process will require staff resources.

Legal implications

61. These are set out in the concurrent report of the Director of Law and Governance below.

Financial implications

62. It is a condition of the implementation of the recommends in this report that the Developer indemnifies the Council against all costs arising from this matter. In the circumstances, therefore there are no financial implications for the Council arising from the recommendations in this report.

Consultation

63. Internally there have been consultations between officers in Regeneration, Legal and Finance.
64. There is no statutory requirement to consult prior to acquiring land under s227 TCPA 1990 nor to the use of powers under s203 HPA 2016. Nevertheless, the council has notified the residents of affected properties as set out in paragraphs 31 to 33, and the responses to that notification are summarised in Appendix F.

SUPPLEMENTARY ADVICE FROM OTHER OFFICERS

Director of Law and Governance

65. The purpose of this report is to recommend the acquisition and disposal of land so that the provisions of s203 of the Housing and Planning Act 2016 (HPA 2016) will be engaged. These provisions enable the overriding of third party rights so that development can be carried out even if it interferes with the rights of others (s203(1)).
66. Section 203 applies to building work where a) there is planning consent for the work; b) the work is carried out on land that has become vested in or acquired by a specified authority. There have been various planning consents and variations to planning consents for this development but the key point is that there will need to be a planning consent in place when work is carried out which interferes with third party rights if s203 is to be engaged.
67. The work must be carried out on land that has been acquired by a specified authority, in this case the Council. It is necessary for the Council to acquire an interest in the land in order that s203 will be engaged. The report explains that the Council will acquire a freehold interest in the land, and immediately grant a sublease back to SHL or LHL as appropriate, the interest to be acquired under s227 TCPA 1990. No premium will be paid as the acquisition will be for nominal consideration and subject to the long lease, so there are no adverse financial consequences for the Council. Suitable security for any liabilities the Council may incur will be obtained in addition to the indemnity to be provided by the developer. The terms of the recommendations in this report delegate authority to the Director of Planning and Growth to negotiate this.
68. The grant of a lease back will amount to a disposal under s233(1)(a)

TCPA 1990 which allows Councils to dispose of land acquired for planning purposes. Land so acquired can be disposed of to such person, in such manner and subject to such conditions as appear to the authority to be expedient in order to secure the best use of that or other land and any buildings or works which have been, or are to be, erected, constructed or carried out on it. S233(3) requires any disposal to be for the best consideration that can reasonably be obtained. The report confirms that there will be no value in the lease such that the requirements of s233(3) are satisfied.

69. The Council will enter into a put and call option agreement with each of SHL and LHL to enable the leases to be surrendered and the land transferred back after a short period of time such that the land will revert back to the relevant developer with the benefit of the powers to override third party interests contained in s203 HPA 2016. There is no requirement for the land to be held by the Council for any particular period of time, so the transfer back of the land after a short period of time is lawful. As long as the work has planning permission it is not a requirement that the work is carried out by or on behalf of the local authority. It also does not matter that the work is carried out pursuant to a different planning permission to that which is currently implemented on the site. The council is aware of future changes to the Scheme and the legislation allows for this.
70. Section 204 HPA 2016 provides that a person is liable to pay compensation for any interference with a relevant right or interest authorised by s203. In this case that will be the relevant developer. However should the developer fail to pay that liability will be enforceable against the authority pursuant to s204(3). For that reason the Council will obtain a full indemnity and financial security in respect of all its costs in connection with the recommendations in this report, including, but not limited to, compensation payable to those whose rights have been interfered with.
71. Decisions relating to the acquisition of land for less than £100,000 are delegated to the relevant chief officer rather than decided by Cabinet pursuant to part 3C of the Council's constitution. Disposals of land of a value of less than £750,000 are delegated in the same way. Since the purpose of the acquisitions and disposals recommended by this report is to engage the powers set out in s203 HPA 2016, which has potential implications for a number of people whose rights might be affected, it is appropriate that these decisions are taken by Cabinet, and not delegated. In addition since the decision requires a departure from the Council's 2016 policy on the use of s227 TCPA 1990 and s237 TCPA (now replaced by s203 HPA 2016) to override rights, that is a matter for Cabinet. The departure from policy is considered necessary for the reasons set out in the report.
72. The Council has received advice from leading counsel in the use of its powers under TCPA 1990 and HPA 2016 and in the light of the Council's

own 2016 policy. Further specialist legal advice will be sought if necessary as the matter progresses.

Strategic Director of Finance and Governance (CE21/062)

73. This report is requesting cabinet to agree the acquisitions and simultaneous granting of leases of the freehold sites at Ludgate House and Samson House to facilitate the development, redevelopment or improvement of the land. Full details are contained within the main body of the report.
74. The Strategic Director of Finance and Governance notes that the recommendations are subject to Ludgate House Limited (LHL) and Sampson House Limited (SHL) entering into agreements with the council with financial security arrangements, to fully indemnify the council against any costs arising from these arrangements, including, but not limited to, the payment of compensation.
75. The terms of the indemnity agreement will need to be examined in detail enabling due consideration for all financial and VAT implications to ensure the Council's interests are best protected.
76. Staffing and any other costs connected with this report to be contained within existing departmental revenue budgets.

BACKGROUND DOCUMENTS

Background Papers	Held At	Contact
Policy for considering intervention under the TCPA 1990 to enable redevelopment to proceed	160 Tooley Street, London SE1 2QH	James Oates 020 7525 5633
Link: https://moderngov.southwark.gov.uk/documents/s62024/June2016Policy.pdf		
Planning Committee report 12/AP/3940	160 Tooley Street, London SE1 2QH	Terence McLellan 020 7525 5365
Link: https://moderngov.southwark.gov.uk/documents/s41084/Report.pdf		
Planning Committee report 18/AP/1603	160 Tooley Street, London SE1 2QH	Terence McLellan 020 7525 5365
Link (please copy and paste into browser): https://moderngov.southwark.gov.uk/documents/s87389/Report%20Sampson%20House%2064%20Hopton%20Street%20London%20SE1%209JH.pdf		

APPENDICES

No.	Title
Appendix A	Plan of Ludgate House
Appendix B	Plan of Airspace Land
Appendix C	Plan of Sampson House
Appendix D	Description of site, planning and public benefits
Appendix E	Legal and policy framework
Appendix F	Summary of responses to notification letter
Appendix G	Bankside Yards planning boundary
Appendix H	Whether the use of the Council's powers would be justified

AUDIT TRAIL

Cabinet Member	Councillor Helen Dennis, Climate Emergency and Sustainable Growth	
Lead Officer	Eleanor Kelly, Chief Executive	
Report Author	James Oates, Regeneration North	
Version	Final	
Dated	7 January 2022	
Key Decision?	Yes	
CONSULTATION WITH OTHER OFFICERS / DIRECTORATES / CABINET MEMBER		
Officer Title	Comments Sought	Comments Included
Director of Law and Governance	Yes	Yes
Strategic Director of Finance and Governance	Yes	Yes
Cabinet Member	Yes	Yes
Date final report sent to Constitutional Team		7 January 2022