BANKSIDE YARDS
ACQUISITION FOR PLANNING PURPOSES

APPENDIX F

SUMMARY OF RESPONSES TO NOTIFICATION OF POTENTIAL DEPARTURE TO OVERRIDING PROPERTY RIGHTS POLICY

Response	Response Summary	Comment
1	Council can only proceed if last resort, but no contact until this letter. Does not agree to rights being taken away without consultation and compensation.	Bona fide negotiations have taken place with all parties with rights that will be materially impacted. The Council's powers under section 203 would be a last resort following extensive negotiations with a number of parties. The properties referred to by the respondent are anticipated to remain well-lit, which is why contact had not been made by the Developer. No rights are taken away. They are overridden and compensation where rights are interfered with would be payable in the event that powers are exercised.
2	Missing paragraphs. Have been in correspondence with GIA since 2018, but haven't had the visit to carry out their individual assessment. Have sent them the independent survey and aware of others in similar position. Similar delay in provision of double glazed doors. In many cases not even attempted to negotiate with residents of Falcon Point. To suggest the proposed action by the Council is justified on the grounds of unreasonable delay evidenced by just 3 cases is disproportional. This is an issue for the developers to address, not the council.	No missing text; an error in paragraph numbering. GIA surveyed the property in November 2019 in relation to daylight and sunlight and determined very minor impacts would result from the Scheme. Double glazing is a separate issue, but the Developer has confirmed to the Council that the works will progress in 2022 as soon as the legal arrangements are in place. 37 out of 40 neighbouring owners whose light is materially affected by the development have appointed surveyors (at the Developer's cost) and terms have been agreed with 21 owners. There are some interests, however, where the negotiations have failed and therefore S203 is recommended as a last resort to facilitate the development.

3	Objects to the scale of development consented. Development will lead to shadow over garden and flat in afternoon and evening. Also privacy concerns.	Scale and massing as well as daylight, sunlight and overlooking are all issues considered by the Planning Committee at the time of considering the Scheme.
4	Query regarding paragraph numbering. Further information requested on rights and implications for residents.	No missing text; an error in paragraph numbering. This resident has agreed a compensation settlement with the Developer. This will be honoured by the Developer irrespective of Cabinet's decision.
5	Property is one of most affected by loss of light. Developer has offered a "paltry sum". S203 should only be used when reasonable negotiations have failed. The compensation offered is less than 1% of the value of the property – a derisory sum given the major diminution in value. Not reasonable negotiation.	Developer will continue to negotiate and honour any sums agreed. If S203 were to be implemented then compensation will be payable in accordance with S204 (on the basis of diminution of value of the affected property) and any dispute would be settled with the Lands Tribunal.
6	Insufficient detail in letter. Need to understand implication to residents. Implies rights holders are creating delay, but not our experience. Could provide examples of developer's lack of engagement and procrastination dealing with adversely affected parties in relation to this project and Neo Bankside.	An offer was made in respect of both properties in November 2019 and the Developer's team continues to engage with the residents' appointed surveyors. Additional radiance studies have been carried out, which show the loss of light would be minimal.
7	Bankside Yards is not a positive for its neighbours, especially those on Hopton St. If LBS were to use powers, costs of any dispute to Lands Tribunal should be paid for by Developer.	Developer will continue to negotiate with affected rights holders and honour any sums agreed (including covering costs of surveyors and lawyers). If S203 were to be implemented then compensation will be payable in accordance with S204 (on the basis of diminution of value of the affected property) and any dispute would be settled with the Lands Tribunal.
8	Concerned about the size and height of Buildings 4 and 5 in terms of loss of light and overlooking.	Scale and massing as well as daylight, sunlight and overlooking are issues

	Would like Council to comment on the Supreme Court Neo Bankside privacy case and also on their specific rights to light. Positive about redevelopment of the area, but quality of life of existing residents needs to be considered.	considered by the Planning Committee at the time of considering the Scheme. The Council is not a party to the ongoing litigation and therefore cannot comment. In any event this is a separate development to the one in question. Any rights of light enjoyed by the resident would not be taken away, but any ability to injunct would be replaced with a claim for compensation calculated at the point that any rights were interfered with. The Council understands that this is a low risk property and rights of light infringements are anticipated to be low, albeit a detailed survey has not yet been undertaken to confirm.
9	Strong objection. Disappointed that the Council puts the interests of developers above the rights of residents. Initial briefing was lacking in transparency and residents had to raise questions to be able to understand the proposals fully. The process has reinforced negative views of the Council's decision making. Removal of rights to negotiate is tantamount to contravention of human rights legislation. Unfair that all residents should have rights removed because negotiations have failed with 3 residents. Individual negotiations should be concluded with all affected residents.	The response period was extended to allow for a briefing for Ward councillors and also the provision of Q&A information. Human rights considerations are set out beginning at section 45 of this Report. Following an internal survey, GIA concluded that this property would not experience a material change in light. This was relayed to the resident's rights of light surveyor (DPR) in August 2020. To date, DPR have not disputed GIA's conclusions. Where offers have been made, the developer will honour them irrespective of the Council's decision regarding use of S.203 powers.
10	Disgusted that there are statutory powers that allow an intervention by the Council to facilitate a faster and probably more cost effective settlement. It seems a devious and risible device of creating a false interest in the site before transferring it	S.203 was introduced in 2016 to replace and broaden S.237 powers (in force since 1990). The Council has used these powers on numerous occasions to facilitate development of its own land. It is a well recognised legitimate legal mechanism.

	back. The Council says that rights owners will not lose their rights, but if they are being overridden surely they are lost? £10,000 compensation is a derogatory sum.	It is unclear what the £10,000 figure relates to. GIA has not had any direct correspondence to date with this leaseholder as the flat has no windows that face directly onto the development site.
11	Disappointing that the Council is collaborating with a property developer to override residents' rights. This is just one of a number of high-rise projects in the pipelines, all of which will have negative impacts on light. Personal experience of loss of light from Kings Reach Tower. The basis of compensation being linked only to loss in value of the affected property is inadequate. Council should make the light report more visible and transparent to residents at the planning stage. Developers should be required to be candid about the downsides and explain how they will mitigate. It was evident at the planning stage that rights to light would be an issue. The developer could have started negotiations then. No sincere effort to negotiate in a timely manner in good faith. Presumably the intention all along was to rely on the Council to use its powers.	The basis of compensation is set out in statute. In any event, where an offer has been made the developer will continue to honour it irrespective of the Council's decision as to whether to use its powers under S.203. The Council has reviewed evidence of ongoing negotiations since 2017 with the more materially affected owners. Whilst Cabinet is asked to consider departing from a requirement to evidence that negotiations have failed with *all* parties, the use of powers is still considered to be a last resort - some negotiations have failed and an injunction is now threatened. GIA has not had any direct correspondence to date with this resident. It is not anticipated that this flat will experience an actionable change in light as a result of the development.
12	The use of powers appears premature and would be an over-extension of the council's powers, contrary to its policy. Have not had contact from the developer to discuss any potential injury or seek to reach an agreement. Lease includes a right of light. The reason there are so many tenants to deal with is because of the unprecedented scale of the development.	Initial analysis GIA undertook for this flat (based on assumed layouts) indicates that the property will remain well-lit. The proposed use of powers is still considered a last resort. Negotiations have been ongoing since 2017 with the more materially affected owners and in certain cases have now failed. The departure is because negotiations

	It is disingenuous to state that this is a minor departure on one aspect – quite a contentious move to extinguish neighbours' rights. Urge the council to encourage the developer to continue to negotiate.	have not as yet failed with *all* parties, which would be an unrealistic requirement given the number of potentially affected interests.
13	SH4 should be moved westwards into the redundant space to create a green space along Hopton Street. This would qwell residents' concerns and was raised during the planning process.The developer also needs to give back land to the public within the development to equate to the area of public highway that has been 'acquired' on Hopton Street. The developer has assured Falcon Point residents that there would be no loss of light, sky, airspace. Residents were also promised enclosed balconies in 2017, but they still have not been provided – yet two gigantic buildings have been demolished and a skyscraper built in this time. The developer has also been requesting excessive amounts from Falcon Point residents to extend their leases.	A number of the points raised are not directly related to the use of S203 powers or the potential notified departure. The Council has agreed legal arrangements with the developer recently to allow the balcony enclosure works to progress. Initial analysis GIA undertook for this flat (based on assumed layouts) indicates that the property will remain well-lit.
14	1. Resident has made cutback and redesign requests, but had no engagement. Developer has not engaged properly to allow residents to assess and understand the scale of the injury to allow negotiations. 2. Developer has stated that an injunction is "premature", but is now seeking use of S.203 powers. How can the Council be discussing S203 when there are still planning applications outstanding on the site? 3. The availability of an injunction for rights of light impacts recognises the importance of light rather than something that can be priced. The Council appears to have aggregated rights to light as "rights	1. The Council has reviewed sufficient evidence that technical information has been shared. 2. Whilst the Sampson development will take time to progress to the point of interference with rights (the extent of impact will only be certain once the development is more progressed), works are progressing on the Ludgate site. Funding and development certainty are also relevant considerations. The legislation allows for flexibility as the planning position evolves. It is not intended that the Council's powers would apply only to a specific planning permission, but to the regeneration of the site. The

	over land". Daylight is key to human wellbeing and this is not highlighted sufficiently. 4. A judge could also award damages in lieu of an injunction based upon the profits of the part of the development that is causing the injury. S203 overrides long established and well considered legal rights. 5. The Council taking temporary ownership of a site is a sham. The legislation does not expressly propose this, but leaves the door open to the approach. 6. The Council introduced policy to assess when such powers are appropriate and "last resort" is a key plank to that policy. The request to change the policy is not "minor" but a fundamental change. The forward to the policy itself states that it will only be considered in the last resort. The policy has to be viewed as a whole. 7. The policy states "Where those negotiations failed … and as a consequence the proposed scheme cannot proceed." Any viable scheme can proceed – it is the developer's choice and potentially their focus on super profits if not. 8. If last resort is removed, reliance on S203 becomes the primary resort. To what standard will the developer be held in negotiating? What training has the council's Director Regeneration received to assess whether appropriate negotiations have taken place? 9. It is perverse that the standard the council intends to hold itself to is lower when there are less injured parties. There are 6 buildings being built that have potential to be injuncted. Each building has 1 to 8 injured parties. This is not an unmanageable position. Southwark should refer to how Hammersmith & Fulham dealt with the more	proposed acquisition is for planning purposes. 3. If exercised, the Council's powers would override all rights over the acquired land, not just rights of light. Rights of light is a separate matter from daylight and sunlight considerations, which are considered as part of the planning process. 4. S203 is a well established legitimate legal mechanism to allow councils to facilitate development. If exercised, compensation would be payable for any rights impacted by the development. 5. Temporary ownership of the land is sufficient and caselaw supports the proposed approach. 6. It is not suggested that the use of powers should not be a last resort. The council is satisfied that the developer has negotiated with all materially affected owners for a reasonable time period. The departure relates to the fact that the developer will not have reached the point of failed negotiations with all parties that may have rights over the land. To insist on this is considered unreasonable and not the intention of the policy. 7. Viability information is assessed at the point of planning decisions being made and the package of obligations (including affordable housing and the payment of CIL) is considered in this context. Given the sums being demanded by some negotiating parties, the development would not be viable if the developer was forced to agree to these demands. The developer will continue to honour all offers that have been made and will provide the council with full indemnity protection in the event that powers are exercised. Statutory compensation would be

	complicated Chelsea stadium proposal – powers were only approved given a residual outstanding single interest from more than 80 rights holders. 10. The planning officer appears to have relied only on evidence from the developer on negotiations. This has not been shared so is not transparent. 11. Respondent's position is that the extent of injury to his property has not yet been agreed so how can negotiations have reached an impasse? 12. The Council should check if S203 is being applied retrospectively. If so the process becomes illegal from the outset. 13. The developer states publicly that the development value is £2.5bn, but the S106 was agreed against a development value of £1.5bn. Marginal viability is not an issue – it is super profits to a Singaporean domiciled investment fund. The developer is highly motivated as the injunctable interests aggregate to nearly 400,000 sqft of development (with a value of c. £700M). 14. A proposal is suggested that requires the Council to assess the viability of a scheme where no parties are injured. If viability is not established then the scheme should be redesigned to minimise the injury to the greatest number of residents whilst remaining viable. If, after these steps have been exhausted, there are remaining residents where light has been reduced to an injunctable level, they should be rehoused in the new development on a like for like room and sq ft basis). Only then, if there are remaining interests, should S203 be exercised. 15. Expect developer has adequate insurance to deal with this.	payable where rights are overridden. 8. As above, it is considered that the exercise of these powers by the Council would be a last resort measure. 9. The policy requirements need to be reasonable and achievable. To insist on failed negotiations for all parties is not realistic in a situation where there are so many potentially affected interests. 62 owners were initially identified as the most likely to be materially affected by the development. This reduced following detailed surveys to 40 parties with whom the council has seen sufficient evidence of active negotiations dating back to 2017. To insist on the developer having contacted all parties with a potential interest is considered unreasonable. 10. In accordance with council policy, officers have reviewed details of negotiations prior to making their recommendation to Cabinet. Much of this is commercially sensitive and therefore cannot be shared. 11. The council is aware that the respondent has threatened to injunct the development, which is a factor that has been taken into consideration. The precise extent of injury will only be certain once the development proceeds to impact on rights, which is why the statutory compensation is only payable at the point that rights are infringed. Negotiations with the developer are undertaken on the basis of an envelope of development, which the council considers to have been reasonable (it being greater than the consented development to allow for future planning aspirations). 12. The S203 procedure would only override rights that are infringed after it takes effect. It will not apply

	16. Mechanism is extremely aggressive and designed to override the rule of law. 17. The developer's RoL surveyors have not responded to questions raised by the respondent's consultants from April. They were due to undertake radiance analysis, but we haven't seen it. 18. Reference to the Code of Corporate Governance, quoting "Behaving with integrity, demonstrating strong commitment to ethical values and respect the rule of law"…"Ensuring openness and comprehensive stakeholder engagement"… "The council consults and engages with Stakeholders in all areas of its business. It welcomes the public's and community's views as part of the constitutional process." 19. Separately the lawyers' letter contends that there has been a delay in provision of technical information and no cutback shared to determine if an alternative viable scheme could be built that would not interfere with rights. Queries timing of S203 if Sampson development won't proceed above ground for a few years.	to rights that have been impacted before this time. The council has taken independent legal advice from a leading QC and is comfortable that the procedure is entirely lawful and legitimate. 13. The S106 agreements include viability reviews such that the affordable housing contributions will increase if the viability improves with time. Given the extent of cutbacks that would be required for the development to avoid infringing on any rights, the council does not consider there to be a viable alternative form of development that would meet the policy requirements for the site whilst avoiding impacts on rights over the land. 14. The legislation provides a legitimate power for the council to exercise, ensuring that adequate compensation is paid to the extent of any impact on rights. 15. The potential use of powers is to facilitate development. Insurance cannot prevent an injunction. 16. The legislation provides a legitimate power for the council to exercise, ensuring that adequate compensation is paid to the extent of any impact on rights. 17. The Council has reviewed sufficient evidence that technical information has been shared. 18. The council has engaged with over 600 residents in relation to the potential exercise of powers and is confident that the CoCG and all due process has been followed. 19. The Council has reviewed sufficient evidence that technical information has been shared. The timing of the S.203 takes into account the ongoing progress of negotiations and the need for certainty to allow for future funding and development of the scheme.

15	1. Development can be constructed in an alternative way that achieves policy objectives and delivers equivalent public benefits without interfering with clients' rights of light. 2. No viability evidence to show cutback would render scheme unviable. 3. Persistent refusal to engage in meaningful discussions regarding appropriate cutback. 4. There have been a number of changes to the Scheme, which shows that a different development is viable. 5. Developer trivialises clients' rights which undermines case for S203. 6. Compensation needs to be clearly understood before Council potentially exposes itself to significant levels of compensation. 7. Pre-determination and a failure to follow due process. 8. Council should have independently assessed level of compensation. 9. Council has not entered into any negotiations to financially compensate our client. Cannot rely on negotiations by a third party before exercising powers. 10. Client has not made unreasonable demands, but sought to collaborate with the Developer on a reasonable alternative. 11. The fact that a guarantor required for S106 obligations casts doubt on the deliverability of the Development and demonstrates a concern as to ability to meet significant financial liabilities. 12. Request for copies of all S106 agreements and confirm which obligations have been discharged. 13. Insufficient information on public benefits. Council needs to be clear which permissions will be implemented to understand which benefits will come forward.	1. The policy requires consideration to be given to whether there is a reasonable alternative way of developing the site to achieve the outputs of the consented scheme, without interfering with rights. The Council understands that there is no reasonable alternative scheme. The cut backs required to avoid interfering with the objector's rights, or with all the rights affected, would render the scheme unviable and would not achieve the outputs and benefits of the consented scheme. 2. The planning applications demonstrated the maximum reasonable provision of affordable housing as part of the S106 agreement process, including viability review mechanisms. A significant reduction of the consented floorspace would mean that the consented outputs could not be achieved. 3. Officers have seen GIA modelled cutbacks as well as some prepared by other rights holders. Note there are a large number of affected interests around the site. 4. Viability moves with time and values. More than one scheme can be viable, but significant cutbacks will impact on viability and budget to provide benefits. 5. The respondent's rights are recognised and the impact has been assessed. 6. The exercise of rights would be subject to an adequate indemnity arrangement. 7. As anticipated by the policy, Officers have been liaising with the Developer in order to prepare a detailed report and recommendation to Cabinet. The decision is for Cabinet and will take account of all responses received to the Council's letter, which was sent to more than 600 addresses. This is not the first use of S203 by

	14. Only 37 on site affordable housing units – insufficient to justify high bar for use of powers. 15. Need to show compelling case in public interest and that comply with CPO Guidance. 16. Need to show proportionate – Art 1 and 8 of Protocol 1 of ECHR. 17. Development has proceeded at a slow rate and no evidence to demonstrate this will change. 18. Developer has had time to seek a Court declaration to confirm that the development would not cause an actionable interference with our clients' RoL. This is the appropriate relief rather than S203. 19. As the planning permission has been implemented S203 cannot be utilised. 20. The consultation does not contain the information required to enable the Council to make an informed decision. 21. The Council needs to demonstrate that it could exercise its CPO powers. This means demonstrating a compelling case in the public interest and complying with the CPO Guidance. 22. Consistent with law and CPO Guidance, policy is clear that the Council "needs to be satisfied that the developer has made reasonable and genuine efforts to reach agreement with the beneficiaries". 23. Council refers to delay rather than a beneficiary being not prepared to negotiate. 24. Press articles suggest £2.5 billion GDV; Agreed GDV for viability was £1.5 billion. 25. Legitimate expectation that Council will comply with policy. Unlawful to depart for one case only. 26. Insufficient consultation and insufficient time. Current	the Council and there is a policy that sets out when it may be appropriate to do so. 8. Indemnity arrangement means that the costs will sit with the Developer. The final costs cannot be calculated until the point that rights are interfered with as the works may continue to change. As noted in the policy: "It is not the council's place or intention to determine where one or more financial offers have been made to beneficiaries if those offers are right. Instead, it needs to be satisfied that the developer has made reasonable and genuine efforts to reach agreement with the beneficiaries." 9. Compensation will be calculated at the time of breach of rights. It would be premature to do before. 10. S203 is designed to allow rights to be overridden where development is being held back by rights over land and where, despite negotiations, settlements have not been reached to facilitate the development permitted. It is not only this owner, but there are a number of interests around the site for which S203 would take effect. 11. An indemnity arrangement would be in place prior to any use of powers. The same guarantor will act to guarantee performance as did for the S106. All major Southwark S106 agreements require such an arrangement – it is not specific to this scheme. 12. All S106 agreements are available on the planning portal. The obligations are monitored by the planning obligations monitoring officer in the usual way. 13. The Council is aware of the different permissions and the varying planning benefits. S203 expressly allows flexibility for the planning permissions to vary and evolve provided that the works are

	consultation is too narrow as focussed on one point of policy and proposal is not at a formative stage. 27. Which negotiations have failed and which are not required to be undertaken?	for purposes related to the purposes for which the land was acquired. 14. The on-site affordable housing provision is policy compliant for the uplift in floor area that the BYE Permission brings over the previous masterplan consent for the Sampson House site. This together with the substantial payment in lieu was considered by the Planning Committee to be adequate and justified in accordance with the development plan. There is also a viability review mechanic in the S106 which will ensure that the affordable housing provision is updated in the event of increased profits over time. 15. This report makes clear the considerable public benefits to be derived from the scheme. 16. This matter is dealt with in the main body of the report. 17. The legislation does not require a particular pace of delivery. 18. The need for S203 does not relate only to this owner, but to a number of owners around the site. The Council's policy on the use of S203 does not require a developer to take this initial step. 19. Works already undertaken will not benefit from the S203, but this does not prevent the Council from exercising its powers in relation to the remainder of the works (which are considered to have the most impact on rights of light). 20. The letter was not for the benefit of Cabinet, but to ensure all people with potential rights within the vicinity of the site (over 630 addresses) were aware of the Council's consideration of use of powers and the potential departure from one limb of the policy. 21. The Council could exercise CPO powers and so this limb is satisfied.

		22. It would not be reasonable to require all negotiations to have reached the last resort, particularly when there is evidence that some have and so S203 will be required to facilitate the development. 23. Negotiations have been ongoing for 3 – 4 years. A number of these have now been stalled for a while. 24. The Council cannot comment on press articles or what evidence they are based on. Viability reports have been independently assessed and any updates would go via the same route prior to being agreed. 25. This is not the first time that the Council has taken this approach and disapplied this limb of the policy due to the quantum of interests. The purpose of the Council's letter was to alert all interested parties to this possibility and ensure people have had the opportunity to make representations ahead of Cabinet making its decision. 26. In line with Council practice, the letter was a voluntary notification rather than a consultation required by the legislation. All responses will be considered prior to a decision being taken. The time period for responses was extended from 2 to 5 weeks (including the festive period). 27. This information is commercially sensitive. As recognised by the 2016 policy, details of negotiations are not reported to Cabinet, but the Council's Director of Planning and Growth has knowledge of the relevant offers and details of negotiation progress and considers that the use of S203 in this case is justified and necessary.