

APPENDIX B

Appropriation of the land (shown hatched on the plan) at Appendix A 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 the 1-3 Odessa Street. 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 provision of new housing and an improved public realm including extending the Thames Path at this location. 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 A is no longer required for its current purposes for the reasons set out in paragraph 7 of this Appendix 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 Odessa Street new development proposals it may be appropriated for planning purposes.
3. Section 122(2)(A) of the Local Government Act 1972 provides before appropriating 'open' land notice of the intention to do so, is to be advertised for two consecutive weeks in a local newspaper. The view has been taken that the subject land falls within this classification as a result of the public area fronting the river Thames and It is confirmed that the Council's intention to appropriate the land was advertised in the Southwark News on 9 March 2017 and 16 March 2017.
4. Where land has been appropriated for planning purposes Section 203 of the Housing and Planning Act 2016 (power to override easements and other rights) provides that building or maintenance work may be carried out on land even if it involves interfering with a relevant right or interest. This applies to building or maintenance work where there is planning consent for the work, where the work is on land vested in or acquired by or appropriated by a local authority for planning purposes, where the authority could acquire the land compulsorily for the purposes of the building or maintenance work and where the work is for purposes related to the purposes for which the land was vested, acquired or appropriated. The effect of triggering section 203 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 203 is that a claimant cannot secure an injunction, to prevent the development from going ahead - as indicated above, the remedy is a claim for compensation.

5. 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 s203 therefore mitigates this risk.
6. Section 204 of the Housing and Planning Act 2016 provides that compensation is payable where a right is interfered with. Where a person (eg a developer) is liable to pay compensation but does not pay, the liability is enforceable against the local authority. An indemnity against that liability has been obtained from the developer.

Rationale for appropriating the subject site to planning purposes

7. The site is currently vacant but was formerly used as a youth facility. The building on site has structural problems including foundation movement. A new larger and more extensive youth facility has been provided at Salter Road and is operated by the Docklands Settlements. The land's previous use as a youth facility has therefore been abandoned and the land may be put to a different use. Planning consent has been secured for the scheme outlined in paragraph 3 of the main report. As there may be a minor impact on the rights of light to nearby residents from the consented scheme there is the risk one or more of them may apply to the court for an injunction. If an injunction is granted, the scheme will not be able to proceed. In these circumstances, it is appropriate to utilise the powers of section 203 to overcome this risk and enable the consented development scheme to proceed.
8. When land has been appropriated for section 203 purposes it will continue to benefit from its over-riding provisions even when the land is no longer held for planning purposes or owned by the Council.
9. The land identified at Appendix A is no longer required to be held for children's and adults services purposes. As indicated above, the land is now required to be held for planning purposes to facilitate the Implementation of the scheme consented to by the Council's Planning Committee on 8 November 2016.