



City of Westminster

# Cabinet Report

<b>Decision Maker:</b>	Cabinet Committee
<b>Date:</b>	14 <sup>th</sup> December 2015
<b>Classification:</b>	General Release save for Appendices A, B, C, D and E as detailed below as paragraph 4.1
<b>Title:</b>	Use of Westminster City Council's powers to override Rights to Light, to facilitate the development of land to facilitate an Education facility and residential development on the site at Sutherland Street, London, in accordance with planning permission 15/05733COFUL granted on the 5 <sup>th</sup> November 2015.
<b>Wards Affected:</b>	Warwick
<b>Policy Context:</b>	City for All School Organisation (Pupil Place Planning Policy City of Westminster Unitary Development Plan (UDP), (adopted 2007) City of Westminster Core Strategy (adopted 2011 as amended) The Greater London Authority London Plan (2011)
<b>Financial Summary:</b>	See Confidential Appendix C
<b>Report of:</b>	Head of Development, Growth Planning and Housing

## 1. Introduction

- 1.1 The development of the new University Technical College and Residential apartments on Sutherland Street was presented to the planning committee on the 1<sup>st</sup> September 2015, the committee was minded to grant consent subject to the developer entering into a s106 agreement with the Council. The s106 agreement was signed on the 5<sup>th</sup> November 2015 and planning permission was issued.
- 1.2 The Council is satisfied that the redevelopment will contribute to the City for All objectives and deliver much needed secondary school spaces as identified in the Schools Organisation Strategy 2015 with an improvement to the economic, social and environmental well-being of the local area and the wider Victoria Area.
- 1.3 The decision by the Planning Committee (report and minutes available on request) to resolve to grant the application was predicated on the planning benefits evident in the proposal. The report of the Director of planning recognises that some harm will occur as a

consequence of the development, but that such harm can be outweighed by the benefits in the scheme. The planning committee endorsed this and these benefits are described in paragraph 5 of this report.

## **2. Background**

- 2.1 The site previously known as the Ebury Bridge Centre, originally a Victorian Board School, was located on Sutherland Street overlooking the railway serving Victoria station to the West and the Peabody Avenue housing estate to the South. The Site was most recently home to the Westminster Adult Education Service (WAES), which has since relocated to offices in Lisson Grove with new satellite offices at Pimlico Academy and the new Amberley Road development.
- 2.2 The site takes a prominent location on the corner of Sutherland Street beside the Ebury Bridge. The site abuts the Peabody Avenue Conservation Area which lies to the south of the site with the Pimlico Conservation and within 20 metres of the site. While it is within the Churchill Gardens Ward all of the local residents being considered in this report are located within Warwick Ward.
- 2.3 The development proposed will create a new 5,500 sqm University Technical College (UTC), that will deliver vocational training and education to around 500 new pupils along with 47 new residential apartments for private sale.
- 2.4 It is of note that the Council has a range of duties and responsibilities including statutory, facilitating and landlord roles. Officers acknowledge that these roles are not always complementary and are seeking to achieve a balanced solution to this problem.
- 2.5 A key duty of the Councils' is its statutory obligation to provide secondary school places in line with the need identified in the School Organisational Strategy 2015 and the Councils duty to ensure that residents (both tenants and leaseholders) are treated in a fair, equitable and consistent manner.
- 2.6 This paper demonstrates how officers are working on behalf of these residents to facilitate a negotiated and fair settlement between affected residents and the developer whilst ensuring that this essential education facility remains on programme, to deliver secondary school places by September 2017.

## **3. Rights to Light - Progress & Process**

- 3.1 The proposals for the UTC and Residential units on the Ebury Centre site are being carried out by Bouygues Development. The obligation to negotiate a site clear of injunction risk and to pay compensation sits with the developer. A budget has been set with the developer for rights to light payments to residents (details of this are located in the confidential appendix C).
- 3.2 The key risks are deliverability and programme. Should Cabinet consider it reasonable to support the developer and the development, the programme to deliver the education unit and hold the agreed contract price will be secure. Without Cabinet support there is no certainty that the developer will be able to deliver the UTC on time or clear the Contract Conditions Precedent to commence a meaningful start before the longstop date in May 2016.

- 3.3 The development team, led by Bouygues Development (BYD) using Rights of Light consultants Gordon Ingram Associates (GIA) carried out the original Daylight and sunlight assessment that was submitted with the planning application and accepted by the planning committee. Since then the GIA team has also assessed the rights of light of the surrounding properties and assessed the level of injuries that the new development would create when built.
- 3.4 While a number of smaller non-actionable injuries exist, there are eight actionable injuries of immediate concern to the developer and Council. Of these eight, four are leaseholders and the remainder are council tenants.
- 3.5 Should a negotiated surrender with any individual party not be achievable it will become necessary for officers to request that the Cabinet be called on to consider recommending the use of s237 powers, to ensure deliverability of the development however this should not affect the injured parties right to a reasonable and fair levels of compensation.
- 3.6 Negotiations with the injured leaseholders commenced in July 2015 and are well underway. GIA at the time of writing have made an average of 24 contacts per leaseholder. Letters have been sent out to all leaseholders and include an offer of compensation based on the surveyed layout, copies of these letters are in confidential appendix D. This is despite a single leaseholder still refusing access to their property and in this instance the team has based the calculations on similar surveyed flats in the block.
- 3.7 The letters have made offers to leaseholders of between 3 and 3.6 times book value however only a single commercial agreement has been reached with a leaseholder at 3.6 times book value, none of the remaining leaseholders appear likely to engage and accept the developer's terms. A full schedule showing the list of contacts made with each party, the amount offered and extent of the injury to each leaseholder is in the confidential Appendix B and D.
- 3.8 Negotiations with the four Council tenants have progressed well albeit at a slower pace than the leaseholder's negotiations. The tenant discussions are being led by CityWest Homes working with a separate Rights-to-Light consultant Deloitte.
- 3.9 The Council has sought to create a standardised approach to managing tenanted properties RTL, as it is clearly an issue that will be repeated on future development and regeneration projects, given Counsels advice (see Appendix E) that secure tenants, private tenants and sub-tenants can acquire rights to light because they hold legal interests and hence are each capable of pursuing a claim in nuisance for infringement of a right to light. Considering this advice the Councils approach to tenanted RTL negotiations is as follows:-
- 3.9.1 The Councils development team have appointed CWH to work with the tenants and negotiate a settlement for all the injuries incurred. Once the full extent of the injury has been established through survey, in some circumstances the Council as freeholder would accept a payment on behalf of both itself and the tenants affected, looking to pass on a proportion of this payment to the tenant. In these circumstances the Council as freeholder is not looking for a payment for its common or wholly owned parts.
- 3.9.2 The development team proposes that the following offer be made to all tenants affected with an actionable injury:-

- 3.9.2.1 A payment will be passed onto to all affected tenants in return for a signed deed of release of any prescribed or implied rights (should they be found to be prescribed or implied). The level of the payment will reflect the diminution of value (book value) only; or
  - 3.9.2.2 Alternatively should the tenant refuse compensation they can apply to be moved by the Council and will be placed on the Council waiting list. This rehousing offer is based on the needs of the family and managed through choice based lettings and would be open for a limited time period.
- 3.10 Offer letters have now been issued to all four Council tenants, a sample copy is available in confidential Appendix D.
  - 3.11 At the time of writing three of the four affected tenants have allowed their flats to be surveyed and they have all now had offer letters with compensation levels based on the agreed injury levels, at book value. Initial responses from the tenant indicate that 3 of the 4 tenants have accepted the offers of compensation made, subject to contract. No offers to re-house tenants have been made at this time.
  - 3.12 The development team proposes that the following offer be made to tenants affected with a non-actionable injuries as compensation is required the Council will seek this from the developer. The level of the payment will reflect the diminution of value (book value) only. No offer to relocate these tenants will be made.
  - 3.13 Where the Council as freeholder, has an injury to its common or wholly owned parts, it will not seek to claim this from the developer on this project.

#### **4. Recommendations**

- 4.1 That Appendices A, B, C, D and E to this report be exempt from disclosure by virtue of the Local Government Act 1972, Schedule 12A, Part 1, paragraph 3 (as amended) in that these documents contain information relating to the financial or business affairs of any particular person (including the authority holding that information).
- 4.2 That the Cabinet notes the content of this report and agrees as follows:-
  - 4.2.1 That the Cabinet agree to the appropriation, the land in yellow in appendix F, from Education and Investment purposes to planning purposes in compliance with s.122 of the Local Government Act 1972 Act and the subsequent use of the City Council's powers under s.237 of the Town and Country Planning Act 1990 to override rights to light of neighbouring properties infringed by this development.
  - 4.2.2 That the Cabinet delegates that the Head of Development in consultation with the Triborough Director of Law be authorised to agree the settlement of the four tenanted and four leaseholder properties rights of light claims, together with any associated fees and thereafter to formalise the agreements by Deed.
  - 4.2.3 That Cabinet note that the proposed settlement of rights of light compensation payments and associated fees for leaseholders affected by this scheme will be made by the developer within a pre-agreed budget. Should these budgets be exceeded officers would seek authorisation for a budget provision.

## **5. Reason for the Decision**

- 5.1 As outlined previously, the risk of injunction arising from the 'rights to light' held by neighbouring owners potentially interfered with by the development, means that the approved scheme may not proceed unless the City Council resolves to exercise its powers to override these rights through appropriation and subsequently through the use of s.237 of the 1990 Act to facilitate the development.
- 5.2 There is a compelling case in the public interest to facilitate this development and as demonstrated by the Council securing planning permission and the procuring of a delivery partner to deliver this education and community facility, there is a reasonable expectation that the scheme will proceed with a developer procured and willing to commence work subject to the injunction risk being mitigated. Although as outlined above, this cannot be delivered simply through the granting of planning permission. In balancing the benefits of the development and the concerns of those whose rights it is proposed to override, there is clear evidence that the public benefit outweighs the private loss.
- 5.3 Accordingly, it is recommended that the land at Sutherland Street (appendix F) is appropriated from its existing purposes (which are thought to be Education and Investment Purposes) to planning purposes under s.122 of the 1972 Act so as to engage the provisions of s.237 and thereby authorise the development to be carried out notwithstanding the fact that it involves an infringement of rights to light. A previous report in September 2014 authorised the appropriation of this land to housing purposes but this was never implemented. The land was previously used for a school and later for Adult Education purposes and more recently has been a cleared site without buildings and held therefore for investment purposes.
- 5.3.1 This site was identified for redevelopment in 2012 as the site became vacant. Westminster Adult Education Services (WAES) had declared the site no longer fit for purpose and moved to Lisson Grove.
- 5.3.2 The wider area enjoys good transport links, is highly accessible and any new developments will be fully integrated by the provision of improvement to routes and spaces.
- 5.3.3 Appropriation for planning purposes will assist bringing forward this mixed use Scheme and eradicate the risk associated with third party rights over the neighbouring land which may serve to frustrate the development and could result in the UTC and the housing units, not being built. The Council recognises that potential third party rights do exist and if an entitlement is demonstrated, the compensation will be paid.
- 5.4 The UTC and its employer alliance (the Sir Simon Milton Foundation, Network Rail, BT Fleet, Alstom, University of Westminster and Landsec) will deliver the following outcomes for the Council and Westminster residents:-
- 5.4.1 The Council has identified an emerging need for secondary school places, a statutory duty which is covered in the School Organisation Strategy. The development will support the Council in delivering some of these much need places in time for 2017/18 school year.

- 5.4.2 Central government and local business have raised concerns about the lack of skilled resources being trained currently to deal with the emerging infrastructure requirements that a growing economy and country will require. The members of the employer alliance are key to delivering these large infrastructure projects and have specifically identified the need for technical and vocational training to meet this demand.
- 5.4.3 A key benefit of having the employers alliance linked to the UTC is reflected in the promise of guaranteed employment to all graduates of the UTC programme.
- 5.5 The residential for sale not only provides a cross subsidy to enable the project but also creates much needed new housing within the Borough, along with a new public realm and new sense of place by contributing to the wider objectives of the Victoria SPD.
- 5.6 This report is seeking to advise the Cabinet that despite the many positive aspects of the development on Sutherland Street, there are potentially a small minority of local residents on who this development will affect negatively, specifically in respect of their Rights-to-Light (RTL).
- 5.7 Economic Well Being of the area
- 5.7.1 This scheme will support the local economy via the provision of new housing within the Borough.
- 5.8 Social Well Being
- 5.8.1 The new development will contribute too much needed secondary school places in the borough and deliver the council statutory obligation to meet the secondary need within the borough and creating new school employment opportunities in the new education facility.
- 5.8.2 The education facility will provide much needed 6<sup>th</sup> form and vocational training along with additional community space with access to the sports hall and roof terrace which will also be available to local residents through a community use agreement.
- 5.9 Environmental well being
- 5.9.1 The Scheme will make a positive contribution to the street scape particularly on the Sutherland Street. The proposed development will provide an attractive modern building, in keeping with the urban context of the surround.
- 5.9.2 The new development will be built to modern standards, allowing for an energy efficient development sharing plant and recycling heat with the attached school. The development will also benefit from a connection into the PDHU district heating scheme which will supply cheap heat to residents and the school.
- 6. Rights to Light Principles and Case Law**
- 6.1 The new development will interfere with a small number of neighbouring properties' rights of light. Negotiations have been on-going with the residents concerned to reach agreement for release and these will continue. However if a voluntary agreement is not made the

Council may as a last resort have to use S237 powers to override these rights in order to facilitate the development .

#### Appropriation

- 6.2 For appropriation to take place, the local authority must ensure it does not require the land for the purposes it was held for before and the decision maker must consider the case being made in and notes that appropriation is permissible under this section where:-
- 6.2.1 The Council thinks it will facilitate the carrying out of development, re-development or improvement of the land but ONLY IF it is likely to contribute to the achievement of promoting or improving the economic and/or social and/or environmental well-being of the area: or
- 6.2.2 Because the land is required for a purpose which it is necessary to achieve in the interests of the proper planning of the area.

#### Section 237

- 6.3 Section 237 of the Town and Country Planning Act 1990 can only be made where the following requirements are satisfied: -
- 6.3.1 The erection, construction or carrying out of maintenance of any building or work will be carried out on the land;
- 6.3.2 The land has been acquired or appropriated by a local authority for planning purposes; and
- 6.3.3 The development is carried out in accordance with a planning permission.
- 6.4 The proposals to carry out work were granted planning permission on 5<sup>th</sup> November 2015. The land at Sutherland Street is currently held for education purposes and in order to be complying with s237 requirements the land would need to be appropriated for planning purposes under s122 of the Local Government Act 1972 Act.

#### Planning

- 6.5 Resolution to grant planning consent was made at committee on 1<sup>st</sup> September 2015 and planning permission was issued on 5<sup>th</sup> November 2015. The consent was to be subject to the agreement and signing of the s106 which is dated 5<sup>th</sup> November 2015. In addition, the 6 week judicial review period will have expired on the 17<sup>th</sup> December, at the time of writing no applications for review have been received.

#### Consultation

- 6.6 Updates have been provided to the Leader of the Council and the Cabinet Member for Finance on progress with the rights to light negotiations with leaseholders and tenants in advance of the Cabinet Decision. A briefing note summarising the actions taken to date and progress made was submitted to the informal cabinet for discussion and the feedback from those forums have been included in this updated Cabinet report.

- 6.7 Briefing notes have been issued to ward councillors of both Churchill and Warwick Wards on the development progress, along with a more detailed briefing note to Warwick Ward members on the RTL implications to their residents.
- 6.8 The Delivery Partner
- 6.9 The procurement of the consortium of Bouygues Development and Redrow, was crystallised in the signing of an Agreement to Lease on the 5<sup>th</sup> November 2015.
- 6.10 The Developers have appointed Bouygues Construction (BYUK) to carry out the project and works on the enabling package have commenced.
- 6.11 The Council and developer still needs to clear a few condition precedents before the contract goes live, key to this is risk of injunction.

## 7. **Policy Context & Reasons for Recommending the use of Power**

- 7.1 As outlined in appendix A of this Report, a ‘right to light’ is an easement established by long use benefitting land. In rights to light cases where an injunction is awarded due to interference with that right at the conclusion of trial, the injunction is likely to be mandatory (possibly requiring the defendant to demolish whatever has caused the obstruction) and perpetual. But if by the conclusion of the trial the obstruction is not yet in place, the injunction could be prohibitory (requiring the defendant to stop building any further or to not build at all) but this is usually where a planning permission is in place. An injunction may also be awarded before any wrongful action has been undertaken at all.
- 7.2 In order to remove the risk of injunction, a right to light can only be addressed in a limited number of ways:
  - 7.2.1 by agreement;
  - 7.2.2 by unity of ownership and possession;
  - 7.2.3 by abandonment; and
  - 7.2.4 by statute, and in particular by s.237 of the 1990 Act (as amended).
- 7.3 Where such rights are released by agreement, a Deed of Release would be entered into (as has or is being negotiated with several of the parties in this case). Where voluntary agreement is not possible and the other two methods outlined above are not appropriate, s.237 empowers local authorities to override easements, including rights to light.
- 7.4 The effect of s.237 is that where a local authority acquires or appropriates land for planning purposes, the authority or any person who subsequently acquires an interest in the land may implement a planning permission even though doing so might interfere with a third party interest or right, including a right to light. S.237 refers to “overriding” the right because the right will remain in existence and enforceable but the remedy will be compensation rather than an injunction. 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 rather than a claim for equitable damages.
- 7.5 A local authority can only exercise its power under s.237 to override a right to light where the land burdened by the right has first been acquired or appropriated by the authority for



planning purposes. The powers to acquire land compulsorily and by agreement are conferred by sections 226 and 227 of the 1990 Act respectively, and the power to appropriate land for any purposes is conferred by section 122 of the 1972 Act. To implement s 237 an appropriation to planning purposes is necessary.

- 7.6 Requests for use of s.237 powers by local authorities are likely to be more common as a result of the case of *HKRUK II (CHC) Ltd v Heaney* (“Heaney”) 2010, which related to the availability of injunctions in the context of infringements of rights to light and indicated that a court may be more inclined to grant an injunction even where a property has been constructed. As a result of this case, it appeared more likely that affected owners may seek injunctive relief. In the Heaney case proceedings were not begun until the works were completed where an injunction was awarded for the removal of the top two floors of the development. The injunction was awarded even though the developer had tried to resolve matters with the claimant. Prior to Heaney, it was assumed that where rights to light holders stalled negotiations in order to increase/inflate compensation, there would reach a point where the courts would not serve an injunction as the conduct of the claimant (i.e. the rights to light holder) is taken into account. However the decision in Heaney means that it is more likely that the courts will award an injunction. Therefore, for the City Council, where it is supporting the development of sites for social, economic or environmental aims, to avoid possible injunctions of these schemes, the potential use of the powers will become increasingly relevant in future years.
- 7.7 However, the recent case of: *Coventry (t/a RDC Promotions) v Lawrence* [2014] UKSC 13; [2014] 2 W.L.R. 433 indicates that the Courts are more likely to be a bit more flexible than in the Heaney case.
- 7.8 The main points from this case are:
- 7.8.1 That the courts power to award damages instead of an injunction is an exercise of discretion and should not be fettered;
  - 7.8.2 The prima facie position is that an injunction should be granted and that the legal burden was therefore on the defendant to show why one should not be granted, however there is no presumption or inclination by the court one way or the other;
  - 7.8.3 One of the relevant factors which can mitigate against the award of damages can be that the defendant has acted in a high handed manner and or attempted to steal a march on a claimant or evade the jurisdiction of the court;
  - 7.8.4 This case has effectively treated the existence of planning permission as being determinative of the claim.
- 7.9 The uncertainties associated with rights to light issues can result in difficulties in securing funding for developments, delays in the benefits of developments being realised, or the development not being viable as a result of either the financial burden or time constraints. The implication for the development at Sutherland Street is the risk that the intended delivery partner, could commit to undertaking the works (i.e. sign building contracts etc.) and then an injunction be served on the Council to stop the development. As a result, they are unwilling to commit to the development without the risk of injunction being removed.
- 7.10 As set out above, the Council can only use s.237 to override rights by either acquiring the land under s.226 and s.227 of the 1990 Act or appropriating the land under s.122 of the 1972 Act. Without using the powers under s.237, the scheme could not go ahead and the social,

economic and environmental benefits as detailed in this report and more particularly in chapter 5, would not be realised to ultimately improve the health and wellbeing of residents.

## **8. Legal Considerations & Counsels Advice**

8.1 In making a decision as to whether to appropriate the land for planning purposes and to override easements in respect of 'rights to light', the following matters are relevant considerations that should be taken into account by the City Council:-

### **8.2 Whether appropriation to planning purposes and use of s.237 powers will facilitate the carrying out of the Development.**

8.3 The assessment as to which of the Dominant Owners would suffer sufficient injury to succeed in a claim for an injunction is a matter of both fact and law. Where there is a clear risk of injunction, no development will proceed until the elimination of that risk. This project cannot proceed without this appropriation under s.122 and therefore section 237 of the 1990 Act needs to be engaged to facilitate the Development and provide the new UTC and Residential development.

### **8.4 Whether the Development will contribute to one or more of the following objectives and thus be in the public interest:**

8.4.1 The promotion or improvement of the economic well-being of the area

8.4.2 The promotion or improvement of the social well-being of that area

8.4.3 The promotion or improvement of the environmental wellbeing of the area.

8.5 With regard to the approved use of the buildings for education and housing purposes this will benefit the local community together with Council tenants and Leaseholders

8.6 In conclusion the use of s.227 of the 1990 Act to enable the operation of s.237 of the 1990 Act will facilitate the carrying out of the Development which will contribute to the achievement and improvement of the economic and social well-being of the City as a whole (through the provision of an important community facility) and of the environmental and social well-being of this part of the City through the creation of a new education and housing development. The private housing will assist with the cost of development and ensure the development is commercially viable.

### **8.7 Whether rights, capable of being overridden by s.237 of the 1990 Act, exist.**

### **8.8 Whether interference with the 'rights to light' is necessary in order to allow the Development to be carried out and whether agreement can be reached for release of those rights**

8.9 The infringements arise as a result of the development and it is not possible to alter the size or shape of the Development in order to overcome the infringements with regard to 'rights to light'.

8.10 It is accepted that in terms of operational viability, suitability and functional requirements an infringement of 'rights to light' is necessary in order to facilitate the Development. Without this infringement, the scheme would not be implemented and the benefits outlined above would not be secured.

- 8.11 In terms of the timescales provided for reaching voluntary agreement with the Dominant Owners, these are considered to be reasonable. GIA first made contact with the relevant parties in July 2015 by letter and in total therefore nearly 6 months have been allowed for the affected parties to respond and agree terms. However use of alternative methods to contact the parties in question, have been used in order to demonstrate that all reasonable attempts to reach voluntary agreement have been made.
- 8.12 It is also relevant to note that the appropriation is for the specific planning purpose of facilitating the approved Development (as may be amended or modified) and not for unrelated development, which may not deliver the public benefits, envisaged for the current proposal. S.237 is therefore engaged to the extent that infringements arise in relation to the approved Development.
- 8.13 It is considered that sufficient time for reaching voluntary agreements with the Dominant Owners has been allowed by virtue of the efforts made by GIA and consultation letters issued by the City Council to ensure that consideration of the s.237 request is reasonable, although officers have asked BYD & GIA to use additional/alternative methods to make contact with the remaining parties. Should the recommendations of this Report be agreed by the Cabinet, they will have had all the evidence necessary in order to be satisfied that all reasonable attempts to reach voluntary agreement have been made.
- 8.14 **Whether it is in the public interest that the development proposed in the planning made or granted should be carried out.**
- 8.15 Planning Policy
- 8.16 **Whether s.237 of the 1990 Act should be applied in relation to the rights of light and any other easements which would be overridden, and whether any interference with those rights would be proportionate (in particular to any interference with rights guaranteed by the European Convention on Human Rights ("Convention Rights"))**
- 8.17 For the reasons outlined above, namely the public interest of securing the benefits of the Development and the potential risk of injunction following the Heaney case, it is considered reasonable for the City Council to apply s.237 of the 1990 Act with respect of 'rights to light'. It remains necessary however to consider whether this interference with those human rights is proportionate to the public benefit.
- 8.18 ODPM Circular 06/2004 "Compulsory Purchase and the Crichel Down Rules" advises that compulsory acquisition under s.226 of the 1990 Act (and therefore, by analogy, an acquisition of land for planning purposes under s.227 of the 1990 Act which has the effect, by virtue of s.237 of infringing convention rights) "... should only be made where there is a compelling case in the public interest. An acquiring authority should be sure that the purposes sufficiently justify... interfering with the human rights of those with interests in the land affected...". Furthermore, following the introduction of the Human Rights Act 1998 the City Council is required to act in accordance with the European Convention on Human Rights (ECHR) in deciding whether or not to implement the arrangements.
- 8.19 Article 1 of the First Protocol of the ECHR provides that every natural or legal person is entitled to peaceful enjoyment of their possessions ("human rights"). Appropriation of property engages s.237 to authorise interference with rights of light involves interference with a

person's rights under this Article. As these rights are enjoyed by corporate bodies as well as individuals all of those whose rights will be affected can claim an infringement. However, the right to peaceful enjoyment of possessions provided under this Article is a qualified rather than absolute right, as the wording of Article 1 of Protocol 1 permits the deprivation of an individual's possessions where it is in the public interest and subject to the conditions provided for by law and by the general principles of international law.

- 8.20 Article 8(1) provides that everyone has the right to respect for his private and family life, his home and his correspondence. Article 8 would be engaged as a result of interference with rights to light to a private residence. Article 8(2) allows for interference which is "in accordance with the law and is necessary in a democratic society in the interests of national security, public safety or the economic well-being of the country, for the protection of health and morals, or for the protection of the rights and freedoms of others".
- 8.21 There must therefore be a balancing exercise between the public interest and the individual's rights whereby any interference in the individual's rights must be necessary and proportionate. "Proportionate" in this context means that the interference must be no more than is necessary to achieve the identified legitimate aim, thereby striking a "fair balance" between the rights of the individual and the rights of the public.
- 8.22 Planning permission has been granted for the Development and the public benefits arising from the Development, and thus the public interest, are set out earlier in this Report. Furthermore, notwithstanding the overriding of their 'rights to light', compensation will still be available to those who are affected. On this basis it is considered that the public interest in facilitating the Development outweighs the rights of the individuals to peaceful enjoyment of their possessions and to their homes and that the proposed use of s.237 powers results in a proportionate infringement.
- 8.23 **Ascertain whether those entitled to the rights are prepared to relinquish them.**
- 8.24 As outlined above, in this case the applicants have reached voluntary agreement with 1 affected party however there are 3 parties remaining who have not entered into discussions despite the attempts made. However, subject to the Cabinet being satisfied that all reasonable attempts have been made over a considerable time period to engage with these parties, it is considered reasonable and proportionate for the reasons outlined elsewhere in this Report, and necessary to override these rights to facilitate carrying out of the Development.

#### Application to the Council

#### The recommendations of Officers

Officers accept that the development cannot be altered to overcome the infringements without undermining the operational and commercial viability of the scheme notwithstanding the substantial educational, social, economic and environmental benefits that will flow from the development, the Council is of the view that s237 powers should only be applied when all reasonable endeavours to contact and agree with the affected owners have been exhausted. In this regard, the Powers, if used, are being applied to ensure the realisation of this important project, which will deliver substantial economic and social improvements to the local area, but should only be applied as a last resort.

**Background Papers (available on request)**

Planning Report and Minutes of the Committee Meeting 1<sup>st</sup> September  
City for All  
School Organisation (Pupil Place Planning Policy)  
City of Westminster Unitary Development Plan (UDP), (adopted 2007)  
City of Westminster Core Strategy (adopted 2011 as amended)  
The Greater London Authority London Plan (2011)

**Appendices (Confidential):**

**Appendix A - GIA RTL Report**

**Appendix B – Schedule of Contacts**

**Appendix C – Contract, Programme, Budgets and Comparable Process's**

**Appendix D – EFZ Contour Maps and Offer Letters**

**Appendix E – Counsels Advice**

**Appendix F – The Site Plan**