

ANNEX TWO: EXAMPLES OF PREVIOUS USE OF POWERS TO COMPULSORILY PURCHASE LAND AND OVERRIDE RELATED RIGHTS

Like other authorities, Westminster City Council has at times used its powers to support and facilitate land assembly where the potential for the development of the area cannot otherwise be achieved. This Annex offers some previous examples of this approach used by the City Council.

Targeted intervention of this kind is not uncommon where local authorities are seeking to create step-change improvements in areas or districts where the market is failing to deliver economic, environmental or social objectives. The basic principle enables the council to acquire land, extinguish associated rights and then pass the land to the developer. It should be used as a last resort where efforts to buy the land or otherwise agree to compensation for relevant rights have been exhausted. Large-scale examples outside the City include the successful regeneration of the city centres of Liverpool, Exeter and Leicester.

As outlined in the main body of the report, Section 237 of the Town and Country Planning Act 1990 (s237) preceded Section 203 (s203) of the Housing and Planning Act 2016. Under s203 land appropriated by a local authority for planning purposes on or after 13th July 2016 can override third party rights and interests including a 'right to light': this is an easement established by long use benefitting land whereby a landowner may be entitled to receive a certain quantity of daylight through defined apertures in buildings on their land. If a third party substantially interferes with such a right - for example by erecting a building in a way that blocks the light - without the consent of the benefiting owner then this may be actionable, the remedy for which is an injunction.

The s203 powers can be used if:

1. There is planning consent for the development that causes interference with third party rights;
2. The authority could have compulsorily acquired the land that causes the interference for development; and,
3. The development which causes the interference is for purposes related to the purposes for which the land was vested in, acquired or appropriated by the authority.

Essentially, third party rights are converted to monetary compensation. Examples of previous use include:

Development site bounded by Victoria Street, Buckingham Palace Road, Bressenden Place and Allington Street, London SW1 (VTI2)

Compulsory Purchase Order powers were used specifically (authorised in 2009, report at

[http://committees.westminster.gov.uk/Data/Cabinet/20091012/Agenda/\\$Cabinet%20Rpt%20Re%20Proposed%20CPO%20for%20Victoria%20St%20-%202012%20Oct%202009.doc.pdf](http://committees.westminster.gov.uk/Data/Cabinet/20091012/Agenda/$Cabinet%20Rpt%20Re%20Proposed%20CPO%20for%20Victoria%20St%20-%202012%20Oct%202009.doc.pdf)) to enable Land Securities to assemble the land needed for the redevelopment. The Council's costs and risks of claims were similarly

covered by the developer (as GBT is providing indemnities in the current case) with an agreement to dispose to land Securities following acquisition.

Marylebone Town Hall

Section 237 was used to overcome 'right to light'¹ concerns at the Old Marylebone Town Hall in order to facilitate improvement works by the London Business School (LBS). In essence, some landowners did not respond to the LBS after they made contact to discuss their 'right to light'. To ensure the development could progress it was agreed that s237 could be implemented and that any claim by a third party would be converted into monetary compensation. The decision to utilise such legislation was motivated by the benefits of providing a high quality educational facility and improving a Grade II listed building.

Sir Simon Milton UTC

It has been agreed (report at <http://committees.westminster.gov.uk/documents/s15991/Cabinet%20Report.pdf>) that s203 can be used to support construction of the Sir Simon Milton University Technical College and the development of 47 homes (known as the Ebury Centre) at Sutherland Street. As the proposed scheme is relatively tall, officers identified that there was a risk of an injunction arising from the 'right to light' held by neighbouring landowners. In order to prevent this, and to keep the scheme on track, Cabinet Members agreed to use the legislation:

"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".

It was also decided that the developer, Bouygues Development (now known as Linkcity), would negotiate compensation with external leaseholders and that the council would attempt to resolve council tenant cases.
