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**Report of Director of City Development**

**Report to Executive Board**

**Date: March 17<sup>th</sup> 2021**

**Subject: South Bank Regeneration**

Are specific electoral wards affected? If yes, name(s) of ward(s): Beeston and Holbeck	<input checked="" type="checkbox"/> Yes <input type="checkbox"/> No
Has consultation been carried out?	<input checked="" type="checkbox"/> Yes <input type="checkbox"/> No
Are there implications for equality and diversity and cohesion and integration?	<input checked="" type="checkbox"/> Yes <input type="checkbox"/> No
Will the decision be open for call-in?	<input checked="" type="checkbox"/> Yes <input type="checkbox"/> No
Does the report contain confidential or exempt information? If relevant, access to information procedure rule number: 10.4 (3) Appendix number: 5	<input checked="" type="checkbox"/> Yes <input type="checkbox"/> No

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**Summary**

**1. Main issues**

- The regeneration of the South Bank, guided by the co-produced South Bank Regeneration Framework, aims to create a distinctive mixed use district providing over 35,000 jobs and over 8,000 homes. The focus of the regeneration has a major emphasis on 'people first' approaches to place, and providing high quality low carbon spaces between well designed buildings.
- Executive Board has considered a number of items relating to South Bank's regeneration in recent years and agreed measures to deliver social, economic and environmental benefit. This has focussed on unlocking inclusive growth and tackling barriers or market failures that could undermine the City's ambitions for the planned regeneration of the area. There has been significant progress made, particularly with regards to new developments for educational establishments and the delivery of new homes, with over 1,500 units either complete or under construction for both private rented and market sale tenures in the last two years. Alongside this, major infrastructure works are on site to repurpose roads as new public realm, including funding being secured to accelerate the delivery of the green city centre park due to open in 2023.
- The mixed use vision for the area requires a blend of uses and new employment uses can create and sustain the delivery of new jobs across the area, as well as providing vibrancy to support associated ancillary uses – all vital to the long term sustainability of the neighbourhood.

- Notwithstanding the progress with new homes and educational buildings, there remain challenges in securing much needed new employment uses across the area, with demand outweighing supply across the city centre near to transport hubs. There is a lack of larger floorplate, Grade A workplace stock across the South with much of the vacant stock principally flexible workspace in smaller spaces.
- There is also positive progress being made with regards to securing the long term sustainable re-use of the Grade I listed Temple Works, with the Council, CEG and British Library progressing detailed work over the potential of a new British Library North at Temple, with £25m of devolution funds secured to establish a British Library North in Leeds. However, as reported in November 2018, the assembly of third party land is considered crucial in achieving the city's regeneration ambitions at this location and securing the re-use of Temple Works.
- In this context, and to help build upon the momentum within the area/ economic recovery, this paper seeks Executive Board agreement in principle to measures to help secure the timely delivery of new workspace within an area where comprehensive development was previously considered by Executive Board at an area referred to here as the Temple District (appendix 1). It also considers an update on potential Compulsory Purchase action relating to efforts to secure the future of Temple Works.
- Specifically, the report seeks approval of an updated potential Compulsory Purchase Order boundary within this Temple District relating to activity to secure the future of Temple Works further to an Executive Board resolution in November 2018.
- Furthermore, in order to unlock the delivery of a new workspace development on Water Lane further to a request from ASE II (developer and landowner), the report seeks in principle support for the Council to utilise its statutory powers of "appropriation" under section 203 Housing and Planning Act 2016 and in principle support to enter into a related land transaction pursuant section 227 Town & Country Planning Act 1990), subject to conditions as detailed in this paper.
- Should Executive Board agree to the principles contained in this paper, more detailed work will take place ahead of future reports on both matters prior to seeking formal resolutions for the Council to utilise its powers.

## **2. Best Council Plan Implications** (click [here](#) for the latest version of the Best Council Plan)

- Delivering the regeneration within the South Bank is key to realising ambitions in the Best Council Plan regarding sustainable infrastructure, housing and inclusive growth and meeting the city's housing needs through this major plan-led development. The proposals will also deliver against the Council's Inclusive Growth Strategy – delivering on the Big Ideas for place, including 21st century infrastructure, supporting places to respond to economic change and creating jobs close to local communities.
- In considering the potential use of the Council's S203 powers, these have been viewed in the context of the Council's Economic Recovery Framework which Executive Board approved in October 2020. A key aspect of this framework recognised the three principles of "Respond", "Reset and Renew" and "Build Resilience".

- The redevelopment of this site is considered to contribute to the delivery of all three aspects of the framework by facilitating the timely redevelopment of a prominent city-centre site in a recognised area of regeneration and the employment benefits that would follow.

### **3. Resource Implications**

- The Council's in principle support for use of its section 203 powers is provided on the basis the Council is indemnified for all costs it may incur and is thus cost neutral. Independent assurance of any proposed transaction shall ensure that the Council achieves best consideration as per Section 123 of the Local Government Act 1972. With regards to the CPO, the Council is indemnified for all costs relating to any activities relating to the potential CPO action.

### **Recommendations**

Executive Board is asked to:

- i) Note ongoing efforts to secure comprehensive development within the Temple District detailed at appendix 1 to contribute to the economic, social, or environmental well-being of the area.
- ii) Agree to the amended initial and potential Compulsory Purchase Order boundary as shown in appendix 2, relating to the strategy to secure the re-use of Temple Works
- iii) Request that the Director of City Development brings back a paper later in 2021 on agreements to secure the future of Temple Works, the scope and progress on the British Library North, and the potential of a formal CPO resolution should private treaty negotiations not succeed.
- iv) Support the principle of the Council exercising its statutory powers and entering into the proposed land transaction under Section 203 Housing and Planning Act 2016 and section 227 Town & Country Planning Act 1990 as per the proposal contained at paragraphs 3.38-3.39 subject to the conditions outlined at paragraph 3.50-3.51, the development of legal agreements as per exempt appendix 5 and agree that the Director of City Development consults with each of the affected landowners
- v) Request that the Director of City Development reports back with a further report on the section 203 proposal with recommendations on the formal resolution for the Council to utilise these powers.

## 1. Purpose of this report

- 1.1 This paper seeks Executive Board agreement in principle to measures to help secure the timely delivery of new workspace space within an area where comprehensive development is being promoted: the Temple District as previously considered by Executive Board. It also seeks in principle approval of an amended and initial potential CPO boundary within this zone relating to activity to secure the future of Temple Works. This is within the context of supporting the city's post COVID economic recovery.

## 2. Background information

### South Bank Regeneration

- 2.1 Executive Board has considered a number of items relating to South Bank's regeneration in recent years and agreed measures to deliver social, economic and environmental benefit. This has focussed on unlocking inclusive growth and to tackle barriers or market failures.
- 2.2 Accordingly, the city has begun to see significant progress in the regeneration of the South Bank in recent months. More recent progress since Executive Board last considered the South Bank includes:
  - I. Detailed planning consent of a new 3.5 hectare **green city centre park** (Aire Park), including two play areas, a memorial for David Oluwale, an events space and potential of up to 500 new trees. Works are due to start this year ahead of a 2023 opening of the park.
  - II. The Council has secured **£8.6m of funding** secured to deliver Sovereign Square footbridge, Crown Point Road redesign and major new green space at Meadow Lane. Works are due to complete in 2022.
  - III. Major progress on Citu's nationally award winning '**Climate Innovation District**', with 28 houses and 140 apartments under construction, works underway on new 29,500 sq ft grade A office space and £19 million funding was secured in early 2021 for 120 apartments
  - IV. Connecting Leeds works starting on site to redesign four lanes of carriageway/ road at **Meadow Lane** into one lane of traffic whilst delivering enhanced public transport and active travel measures. Repurposed land is being used to deliver new green space.
  - V. The ongoing renewal at **Leeds Dock** as a major centre for digital and technology firms, with the Channel 4 'Steph's Packed Lunch' broadcasting daily from the area. Works are due to commence imminently to convert the former Alea casino into major flexible workspace for technology businesses.
  - VI. Legal & Generals **Mustard Wharf** mixed use development, which provides the Southbank with 250 homes as well as 8,640 sq ft of commercial and amenity space, is close to completion.
  - VII. Dandara's Build-to-Rent apartments, **Leodis Square**, completed construction of 744 residential units in 2020.

- VIII. RCL Partners have begun on site at **Tower Works** in February 2021 having secured funding from Legal and General. The site will capitalise on listed historic landmarks by providing new builds of 245 one, two and three bedroom apartments to rent at one of the most distinctive sites within the Southbank.
- IX. Igloo's **Ironwork's** scheme, comprising over 70 homes for owner occupiers is due to complete this year, with homes being proactively marketed.
- X. **Grainger's** 216 unit residential development for the private rented sector (Fabrik) is progressing on site and has a targeted completion date of late 2021.

### **South Bank: Challenges – New Employment Uses**

- 2.3 Whilst collaboration has seen substantial progress, there remain major barriers to achieving comprehensive development and regeneration across certain spatial geographies within the South Bank, and there continues to be a need to consider actions to unlock barriers to growth in the area. The mixed use area referred to as the Temple District as shown in appendix 1 is one such area.
- 2.4 It is also considered that more momentum is needed to support the delivery of new employment uses such as new build Grade A workspace stock across the South Bank to help to address an imbalance of lack of new supply to meet demands and a backlog of growing demand across Leeds City Centre for new spaces near to transport hubs.
- 2.5 Notwithstanding current COVID related uncertainty, there remain strong demands for new workspace in Leeds City Centre given the excess of pent up demand within the Leeds marketplace for new spaces (see below). It is critical to the city's resilience and recovery that we can bring forward high quality workspaces which are well connected to transport hubs and benefit from extensive local amenities and importantly blue and green infrastructure. This type of space will support businesses which are likely to move forward with a distributed and hybrid team model (where some staff are co-located and some who work remotely). The role of quality workspaces and multi-purpose centres will be paramount for supporting wellbeing and in turn productivity: providing resilience for the city.
- 2.6 Pre Covid there was a notable shortage of high quality workspace in the centre and during the pandemic new workspace has continued to be let with 337,446 sq ft let in 2020. Notable examples of office lettings include DLA Piper agreeing 83,000 sqft leasing of City Square House in January 2021, and Knights agreeing to lease 20,000 sqft of space in the Majestic.
- 2.7 The 2019 total Leeds take-up of new offices was 745,000 sqft against a ten-year average of 600,000 sqft. Whilst the Global Pandemic slowed down lettings and take up of space in the first half of 2020, the second half of 2020 saw 175,000 sq ft transacted with an increased skew towards Grade A space indicating that businesses are making a flight to better quality space. There have been over 200,000 sq ft of new requirements from occupiers circulated so far in 2021, already showing an increasing occupier confidence. Yet city centre office supply stands at 60,000 sq ft across 34 Boar Lane / Majestic and 6 Queen Street. As highlighted in the 2020 Deloitte Crane Survey, Leeds is behind other cities when it comes to 'under construction' office space, with Birmingham and Manchester both having 5 times the amount of space under construction. Whilst the South Bank has seen new investments, these have principally been residential led or educational use developments. There are a number of managed flexible workspaces across the

area, but there is a lack of larger floorplate availability for growing businesses on longer term leases and lack of new build commercial development. The mixed use nature of the area requires a blend of uses and new employment uses can create and sustain the delivery of new jobs across the area, as well as providing vibrancy to support associated ancillary uses – all vital to the long term sustainability of the neighbourhood.

## **Temple Works**

2.8 Furthermore, Executive Board will recall the long history of market failure at the Grade I listed Temple Works, with a substantial conservation deficit.

2.9 In November 2018, Executive Board agreed a series of ‘policy principles’ for how the Council may help to facilitate the re-use of the Grade I listed Temple Works. This included a policy principle specifically on the potential use of the Council’s Compulsory Purchase Powers as follows: (emphasis added)

*The Council will promote a Compulsory Purchase [Order], should it be required, to facilitate the delivery of the proposed scheme and where use of our CPO powers is subject to an indemnity agreement, **in the public interest and linked to the restoration of Temple Works.***

2.10 Executive Board were advised that “*delivering comprehensive regeneration to achieve the social, economic and environmental benefits for the city and to restore Temple Works*” will require assembly of land owned by third parties over and above the land owned by the Council and CEG.

2.11 There are a number of landowners in the vicinity of Temple Works – some of which adjoin the building – and CEG at that time had been seeking to acquire relevant land interests. Given the scale of land necessarily involved for the comprehensive scheme and interests and rights potentially affected by this proposal, CEG sought the support of the Council in terms of land assembly including the potential use of compulsory purchase powers should this prove necessary.

2.12 An indicative boundary of the land that CEG was seeking to assemble was included within the report and is included again here at Appendix1

2.13 Accordingly, Executive Board agreed:

*That the Director of City Development brings a report back to Executive Board providing an update on progress and seeking approval to*

*a. enter into legal agreements once negotiated and finalised,*

*b. make a Compulsory Purchase Order if necessary to facilitate the land assembly required to deliver CEG’s scheme on the basis that any land proposed for a CPO would link to a restoration of Temple Works.*

2.14 The Council has powers under Section 226 of the Town and Country Planning Act 1990 to acquire land compulsorily if they think that acquiring the land in question will facilitate the carrying out of development, redevelopment or improvement of the land and that this is likely to contribute to achieving the promotion or improvement of the economic, social or environmental well-being of the area. The Council must be satisfied that there is a compelling case in the public interest and that the purpose for which it is making a CPO sufficiently justifies interfering with the human rights of those with an interest in the land affected.

2.15 The Holbeck, South Bank SPD (at paragraph 1.6) has a strategic objective to:

*Secure the future of Temple Works and enhance its setting whilst comprehensively completing the regeneration of the area and developing the vacant sites which detract from the heritage assets and separate the population of Holbeck from the city centre.*

- 2.16 The SPD goes on to state within the strategic objectives that *‘the council will encourage a private sector-led scheme but recognises, and will use if necessary, the powers the council has to acquire property compulsorily if necessary to progress comprehensive development’.*
- 2.17 Under the heading “Approach to the Historic Environment of Holbeck” Paragraph 5.2 of the SPD includes specific aims to:
- “Support enabling development proposals which help secure a future for the grade I listed and at risk Temple Works whilst providing an improved setting for the building”* and
- “Utilise powers to compulsorily purchase land to secure comprehensive development in the area where this is linked to proposals to restore Temple Works.”*
- 2.18 It was reported to Executive Board, that it would be the intention to provide further information to Executive Board prior to seeking a formal resolution to make a CPO. It was also reported that *‘as per the SPD, key to this will be demonstrating this is a tool of last resort, and how use of CPO is in the public interest and linked to proposals to restore Temple Works.’*
- 2.19 It has now been over two years since the above noted principles were agreed by the Executive Board. CEG, in this time, has acquired the adjoining ‘1953’ building south of Temple Works (now referred to as Drapers Yard), 20 Sweet Street (also adjoining) and is progressing conversations with other landowners. CEG has also progressed work to bring about the stabilisation of Temple Works.
- 2.20 Negotiations have also progressed with the British Library as to their future occupation and use of Temple Works, which has in turn led to the announcement in the March 2020 Budget of a £25 million heritage grant from central funding to support a British Library for the North in Leeds. This is subject to further due diligence, and finalising a funding strategy with a future report proposed on this specific matter.
- 2.21 This is positive progress, which alongside ongoing design and technical due diligence work, is aiding efforts to secure the long term re-use of Temple Works. It is planned for temporary stabilisation works to commence in early 2022, to allow further survey and design work to take place safely and to arrest the decline of the property ahead of a full contract being let for the full stabilisation of the property thereafter.

### **3. Main issues**

#### **Executive Board Decisions**

- 3.1 In this context, and to help build upon the momentum within the area/ economic recovery, this paper seeks Executive Board in principle support to measures to utilise legal powers available to the Council to help to unlock new growth and investments relating to the market failures noted above within the Temple District. Specifically, this report:

- seeks approval in principle to a reduced and initial potential CPO boundary within this district relating to activity to secure the future of Temple Works further to an Executive Board resolution in November 2018. Para 3.2 to 3.8 and appendix 2 summarise the proposals and the justification.
- sets out an intent to continue dialogue with landownerships excluded from an initial Temple Works related CPO with measures set out for the next steps – Para 3.9 to 3.16.
- considers the barriers ASE II (landowner and where CEG is the Development Manager) are encountering in seeking to bring forward new employment uses such as Grade A office, due to potential risks of injunctive action, and the legal context to this (para 3.17 to 3.29)
- seeks in principle support for the Council to enter into a land transaction and utilise its statutory powers of “appropriation” under s203 Housing and Planning Act 2016 and section 227 Town & Country Planning Act 1990 in order to unlock the delivery of development on Water Lane further to a request from ASE II (para 3.30 to 3.48), subject to conditions as detailed in this paper at para 3.49 to 3.51
- Sets out an intent for future papers to be returned to Executive Board, should the need arise, for formal resolutions on a CPO and use of s203 powers as per the steps noted in this paper.

### **Temple Works Related CPO**

- 3.2 There is major momentum to the Temple Works project, yet there remain considerable barriers to securing its ultimate re-use and also unlocking the environmental, social and economic benefits in this part of Holbeck. Indeed, some of the sites not yet acquired through private treaty include a building adjoining Temple Works or sites which are crucial in providing an appropriate setting for Temple Works.
- 3.3 At the same time, given the time passing since a potential Temple Works related CPO was considered by Executive Board, it is now considered an appropriate time for the Council to provide further clarity on the extent of the land that forms part of the Temple District (appendix 1) within which the Council may be willing to support a CPO at this stage.
- 3.4 Accordingly, and in this context, the Council has considered in detail the emerging case for the Council utilising its CPO powers in line with Section 226 (i)(a) of the Town and Country Planning Act in support of the comprehensive development that CEG is promoting. In addition, it has given significant regard to the Council’s stated policy position that any CPO pursuant to the 21 November 2018 Executive Board resolution must be linked to proposals to restore Temple Works. Furthermore, the strength of the link made between the CPO action and Temple Works in social, economic and environmental terms has been considered. The Council has also considered representations from affected landowners.
- 3.5 Based on the evidence that has been presented and analysed to date, in accordance with the Executive Board resolution of November 2018 it is proposed that the area of land within the Temple District that may be subject to a Temple Works linked CPO shall be reduced, as shown within the plan contained in Appendix [2]. This will be the boundary where a CPO links specifically to proposals to restore the Temple Works may be supported by the Council as a first step provided that all statutory and policy tests are met. This does not preclude the

Council from pursuing a CPO in the future in relation to a wider area as necessary for broader planning or regeneration purposes but the focus of this report is on a Temple Works related CPO.

- 3.6 The sites known as Globe Quay, Prestige Salvage, land owned by ASE II (managed by CEG) and the railway arches, located to the North of Temple Works beyond Water Lane are excluded from any initial potential CPO action that is specifically linked to proposals to restore Temple Works, in accordance with the Executive Board resolution of November 2018.
- 3.7 This is on the basis that any potential wider CPO of such sites in the future, would be for broader planning or regeneration purposes rather than specifically linked to proposals to restore the Temple Works, as set out within the resolution of the Executive Board of November 2018. This matter is discussed further in the section below. Executive Board is advised that, whilst the boundary adjoins the Farnley Viaduct, it does not include the viaduct infrastructure in the ownership of Network Rail Infrastructure Limited.
- 3.8 This report does not seek a formal resolution for a CPO to be made, but it is the intention that a more detailed paper on Temple Works, with final recommendations on a formal resolution, will be prepared in due course later in 2021/ early 2022

#### **Future Regeneration and Comprehensive Development within the District**

- 3.9 If Executive Board agrees to this, there will be sites within the Temple District, but outside of the Temple Works linked CPO boundary. In determining this, Executive Board is advised that the Council retains its aspiration for the comprehensive regeneration of the Temple District in its wider context set out in the Holbeck, South Bank SPD.
- 3.10 In considering this matter, Executive Board is advised that officers will now seek to collaborate and work with the landowners of Globe Quay, Prestige Salvage and the Railway viaduct arches, as well as CEG in order to help unlock and secure the redevelopment of the sites, and to seek to ensure that the regeneration links to the wider comprehensive plans and policy requirements.
- 3.11 The sites all remain of significant regeneration importance, particularly given the potential for regeneration of the sites to eliminate severance, improve connectivity and enhance the social, economic and environmental benefits achieved in the area. There are also significant planning benefits to be delivered in accordance with the hybrid planning permission granted to CEG on 5<sup>th</sup> October 2018 for sustainable mixed use development which includes detailed planning permission for important employment uses.
- 3.12 It is therefore proposed to identify, with landowners, the barriers stopping development moving forward, and to work with them to effectively co-ordinate their plans within the area where comprehensive development is being promoted: the Temple District. This is with the view of helping to secure the timely redevelopment of the sites whether by the existing landowners, private treaty sale or through use of compulsory powers.
- 3.13 It is considered by Officers that these discussions be undertaken throughout 2021 with a view to establishing a collaborative way forward as soon as possible. Alongside this, the Local Planning Authority is to consult upon a planning brief which shall provide more comprehensive guidance for the future comprehensive regeneration across the District.

- 3.14 The Holbeck, South Bank SPD position remains (at paragraph 1.6) that *'The council will encourage a private sector-led scheme but recognises, and will use if necessary, the powers the council has to acquire property compulsorily if necessary to progress comprehensive development.'*
- 3.15 The decisions contained within this report do not preclude the Council from utilising their statutory powers in the future for compulsory purchase in relation to any site in the boundary in appendix 1 where the Council is satisfied there is a compelling case in the public interest to do so and where statutory and policy tests are met.
- 3.16 In this context, it is proposed that officers progress work with landowners and report back to Executive Board later in 2021 or early 2022 on the status of the collaboration and any potential site assembly implications, if any, arising from this, in order to achieve comprehensive development within Holbeck.

### **New Employment Uses at Globe Point**

- 3.17 Included within the Temple District is land owned by ASE II Holbeck Limited ("ASE II") (represented by CEG as development and investment manager).
- 3.18 Planning permission was granted by the Council for a £350m sustainable mixed use redevelopment in October 2018 of land at Water Lane and Globe Road, Leeds – Planning Reference: 17/06455/FU and as now modified by 17/06455/MOD ("Consented Scheme"). The Consented Scheme and its area has been given the name, Temple (see appendix 3 for the redline and CGI of the consented scheme).
- 3.19 The consented scheme includes new employment uses, residential uses and infrastructure enhancements. CEG's intent is to bring forward the new office development as the first phase; this element has detailed planning permission.
- 3.20 In doing so this will help the city meet demands for new Grade A office stock in Leeds City Centre, and the development would be amongst the first new build office development in the South Bank since the 2008-2010 global recession. The development of new office space will in turn provide for new jobs in Holbeck, easily accessible by public transport, and will support the sustainability of the mixed use neighbourhood as a key component of the city's economic recovery post COVID 19 as noted in paragraphs 2.3 to 2.8 above.
- 3.21 There is substantial appetite from occupiers and ASE II intends to progress the development during the course of this year. There are two 'plots' intended to come forward immediately for development known as Globe Point. Globe Point is due to start construction on site in Spring 2021 see plan appendix 4. CEG's Globe Point will provide a unique offer in and will assist with the critical shortage of Grade A accommodation by early 2022 and will be able to attract occupiers, with CEG reporting an increase in interest over the last three months in Globe Point.
- 3.22 When submitting planning applications for major schemes such as this where there are "likely to be significant effects on the environment" which require an assessment and mitigation to comply with the Environmental Impact Assessment Regulations, Executive Board is advised that applicants are required to submit comprehensive Environmental Impact Assessments, considering environmental matters such as potential impacts and effects in relation to daylight, sunlight and overshadowing from developments.
- 3.23 The Environmental Impact Assessment, produced on behalf of ASE II, found in summary that there would be negligible to minor adverse effects in relation to daylight, sunlight and overshadowing once mitigation was in place. Planning

permission was granted by the Council having had regard to this and all environmental information submitted with the planning application.

- 3.24 Separate to the planning process, landowners can nevertheless have a private legal “right to light” claim which is enforceable against other landowners. An easement or a third-party right is a right enjoyed by a third party over land owned by another party e.g. rights of light or rights of way. A right of light is enjoyed by one property against another and protects the amount of light enjoyed by a property in accordance with well-established principles.
- 3.25 Notwithstanding the observations made during the planning process in terms of the acceptability from a planning perspective of an adverse effect as a result of its impact on daylight or sunlight or by reason of overshadowing being sufficient, this will not prevent the owners of affected sites asserting their private rights to light and using these to prevent construction of the Consented Scheme
- 3.26 An interference with a right of light through construction of a building may be prevented by those affected by seeking an injunction from a court against those who are infringing their right. Often and as usual for developments where right to light issues are a consideration, developers reach settlement agreements in advance of construction with affected neighbours for the release of their rights of light upon the payment of monetary or other consideration. However, all such settlements must be reached by agreement, and if that is not possible there have been cases where those who enjoy rights of light have delayed or prevented a development from proceeding by threatening to or seeking an injunction.
- 3.27 Technical assessment using the conventional method for assessing interference with light (the “Waldram” method), demonstrates the Proposed Development will interfere with a number of rights enjoyed by buildings in the surrounding area. ASE II has reached, or is close to final agreement, with nearly all landowners where there are Right to Light issues, as is standard for this type of development as indicated in exempt appendix [5].
- 3.28 However, ASE II has supplied the Council with information which indicates that not all landowners have engaged with ASE II and ASE II has indicated that they may receive a claim seeking injunctive relief, if the development goes ahead. The consequences of this could be injunctive action, meaning no development as proposed takes place or further and substantial delay.
- 3.29 At the present time, the consequences of this stance are recognisably significant, risks of injunction mean that ASE II is unable to progress its scheme, occupiers are not able to commit to the property, as well as risk of a lengthy delay to the project. In turn this could lead to an important brownfield site that is allocated for mixed use development including employment uses in the Council’s Site Allocations Plan (number MX2-36 and MX1-13), not able to be brought forward for its consented scheme, with the consequential regeneration and economic implications that would follow. Whilst separate to private rights of light matters, it is noted that no objection was made to the planning application by landowner threatening injunctive action, or any party on their behalf.

### **Potential use of the Council’s Statutory Powers**

- 3.30 Given the issues on site, ASE II have asked the Council to intervene by way of using its statutory powers of “appropriation” under s203 Housing and Planning Act 2016.

- 3.31 Detailed consideration has been given to the merits of the council intervening in this matter. It is a matter of fact that the Council support regeneration of this area both in accordance with the permissions granted and also without unreasonable delay.
- 3.32 Section 203 is a powerful regeneration tool which permits a person to carry out works or use land even though it would interfere with a private property right such as a right to light, other easement or restrictive covenant. It operates to convert the right of an owner of an affected property or interest from an injunctable right into an entitlement to compensation only. The compensation is assessed against compulsory purchase compensation principles based on the diminution of the value of the affected property because of the interference with the right.
- 3.33 The protection afforded by Section 203 will apply both to the Council, were it to undertake the Development, and to any party deriving title to the land from the Council. Therefore, if the Council acquires the Land for planning purposes and subsequently disposes of this Land, this removes the risk of an affected property owner, tenant or occupier obtaining an injunction to prevent the Development going ahead based on the infringement of a right to light (or any other right).
- 3.34 In order for the power under section 203 of the 2016 Act to be effective; the development must have planning permission, as is the case here already, the Council must hold an appropriate interest in the land and be satisfied that it could acquire the land compulsorily for the purposes of the work and/ or use on the land.
- 3.35 At present, the Council does not hold an interest in the site, but under section 227 of the Town and Country Planning Act 1990 it may acquire land by agreement for planning purposes where that acquisition is for a purpose for which the land could be compulsorily acquired.
- 3.36 To do so, the Council needs to be satisfied that the circumstances set out in Section 226(1A) of the 1990 Act are also met – in summary, that acquiring the Land would facilitate the carrying out of Development and it would contribute to the economic, social, or environmental well-being of the area.
- 3.37 Executive Board is advised that the appropriation of land for planning purposes by the Council does not of itself override third party rights or infringe them. Only when development progresses and third party interests are affected or infringed does the consequence of having appropriated the Site for planning purposes actually take effect. If there is no development then the act of appropriating the Site for planning purposes does not infringe any third party's rights. The third party rights are not extinguished but infringement (by the development) will result in a right to compensation rather than an injunction.
- 3.38 To use the “appropriation” powers, ASE II propose that the Council acquires the freehold title to ASE’s land that is affected by the rights of light (shown on appendix 4) for nominal consideration pursuant to the Council’s powers under section 227 of the Town and Country Planning Act 1990. The extent of the land would be limited initially to the land within ASE’s ownership on which the office development at Globe Point is to be delivered pursuant to the detailed planning permission element of the hybrid consent referred to above (see appendix 4 for the area in question).
- 3.39 The acquisition of the freehold title is likely to be subject to either an existing long lease or subject to an obligation to immediately re-grant a long lease to ASE. Any transaction would also ensure ASE II re-acquire the freehold from the Council prior to works being undertaken which could infringe private rights. The disposal by the Council would be made under s.233 Town & Country Planning Act 1990.

3.40 Executive Board is advised that the claim for compensation would in the first instance be against the entity carrying out the works, but if payment is not made then a claim may be made against the Council. An indemnity agreement will therefore be entered into with ASE II prior to any acquisition of the land to protect the Council against any liability. This is standard practice and ASE II has committed to do so.

### **Council Initial Analysis**

3.41 In considering this request, officers have considered the context and regeneration outcomes and had due regard to the interference with private property rights and relevant human rights considerations. It is accepted this relates to a dispute between two parties relating to a private right of light issue, which in most circumstances can be negotiated to a reasonable outcome for all parties and any intervention by the Council needs to be very carefully considered.

3.42 Based on information presented to the Council to date, Officers are satisfied that ASE II has made attempts to negotiate and has reached successful resolutions with most other owners benefiting from rights of light. It is also clear that the threat and risk of injunction is preventing the new employment uses being delivered on the land pursuant to the detailed planning permission within a longstanding regeneration priority area and is frustrating the substantial planning and other public benefits from being delivered. As noted above, during the planning process impacts on natural light were considered and found acceptable.

3.43 The Council also recognises that the consented scheme is in an area where the Council is advocating comprehensive development which collectively would deliver significant public benefits in a longstanding regeneration priority area where there is substantial potential and momentum to achieve a wide range of, social, economic and environmental enhancements and improvements. In particular, the intervention of the Council will help to unlock much needed employment uses to the South Bank and will help to support the ongoing regeneration of sites located close to Temple Works.

3.44 Further, in considering the potential use of the Council's S203 powers, these have been viewed in the context of the Council's Economic Recovery Framework which Members approved in October 2020. A key aspect of this framework recognised the principles of:

- RESPOND – Where required, continue to take immediate actions to support businesses and the economy as we have done since lockdown in March 2020.
- RESET AND RENEW – Ensure we understand the challenges and opportunities that we face in recovery and that we have a clear focus and direction on the projects and partnerships that will address them.
- BUILD RESILIENCE – Maintain a long-term view of our aspirations to deliver Inclusive Growth, address the Climate Emergency and be the best city for Health and Wellbeing. Ensure that our decisions lead us towards these.

3.45 Accordingly, it is concluded that the redevelopment of this site would contribute to the delivery of all three aspects of the framework by facilitating the timely redevelopment of a prominent city-centre site in a recognised area of regeneration. In particular, the potential use of our S203 powers would:

- I. Help to ensure that a key regeneration site is not stalled in its delivery (the site is also within a Spatial Priority Area by the Combined Authority)

- II. Help to deliver the first phase of a wider development proposal for the Globe Road, Water Lane area, which in total encompasses detailed planning consent for the first phase for two office developments with ground floor retail and leisure totalling up to c230,000 sqft and outline planning permission for the wider mixed-use development of up to c1.1m sqft of offices, retail, leisure, hotel, health, education and community uses, parking and up to 750 new homes (including affordable home provisions), along with new public spaces and landscaping.
  - III. Help to maintain the momentum secured on the back of the delivery of the Mustard Wharf scheme, works being on site at the Ironworks and Fabrik scheme, and the commencement of the redevelopment of Tower Works.
  - IV. Lead to the letting of a significant construction contract which will help to retain jobs and apprenticeships in the sector.
  - V. Create an opportunity for new jobs at a time when unemployment rates in the city have increased significantly and the opportunity for apprenticeships, building on the Forging Futures Scheme that CEG successfully brought forward at Kirkstall Forge.
  - VI. Help a consented scheme and site allocated in the Council's Site Allocation Plan to come forward.
  - VII. Result in the delivery of a BREEAM excellent offices to help meet the need identified earlier in this report and which will further enhance the environmental performance of the city's employment spaces.
  - VIII. Complement the wider regeneration of the South Bank and the fulfilment of the Council's overarching plans for the area including improvements to local infrastructure and connectivity to the Holbeck community.
- 3.46 Taken collectively, the potential outcomes outlined above creates a positive case in principle for the Council to explore further the use of its S203 powers in this case.
- 3.47 Conversely, should the Council take a passive stance in this instance, then the potential for the site to remain undeveloped and the consented scheme not come forward would remain a risk. Under this scenario, the potential benefits outlined above would very probably not be realised within the lifespan of the Economic Recovery Framework for the city.
- 3.48 Officers are satisfied that, on the position presented, in principle, the relevant tests are met under sections 203, s.226, s227 and s.233. The Council has powers for compulsory acquisition and officers are satisfied that there would be a compelling case in the public interest for such acquisition which would justify interference with the private property rights in a proportionate manner in order to deliver the planning and other benefits on the relevant land. Officers are also not aware of any other impediments to delivery of the scheme on the land or reasonable alternatives for achieving the scheme's objectives.

**Proposed Next Steps**

- 3.49 Having regard to all the above and the information presented to the Council to date, it is recommended that the Council is minded to support the request in principle. This is on the basis that the risks of injunction are removed to support the delivery of the consented development on the land but that affected landowners would still secure compensation in accordance with CPO compensation principles. Any impact on the private rights is considered proportionate and there is considered to be a compelling case in the public interest justifying such interference.

3.50 Accordingly, it is proposed that this resolution for in principle support to use of the Council's powers in the manner set out is subject to:

- i. The Council being fully indemnified against all costs and potential liability and it being cost neutral to the Council, informed by independent valuation advice on potential compensation liability
- ii. Legal agreements being completed as per the Heads of Terms set out in exempt appendix 5 or such amended terms as officers consider appropriate. To include further due diligence on any private rights affected
- iii. Confirmation from that the transaction achieves best consideration as per Section 123 of the Local Government Act 1972 and s.233 of the Town and Country Planning Act 1990, as per independent valuation advice.
- iv. Independent peer review and assurance of all Right to Light assessments produced to date.
- v. Evidence and confirmation from ASE II/ CEG that they shall start full works on the Land promptly after the risk of injunction being removed
- vi. Notification of the affected landowners of known rights and consideration of any representations made.
- vii. Other matters noted in exempt appendix 5

3.51 It is proposed that the Council's powers shall not be exercised and proposed transaction shall not be completed until a further detailed update report has been provided to the Executive Board and a final resolution has been made to approve the same. Executive Board is also advised that the Council intends to consult with the affected landowners prior to formal recommendations on a resolution being made.

## **4 Corporate considerations**

### **4.1 Consultation and engagement**

4.1.1 The proposals contained in this report have been subject to consultation with the Executive Member for Resources.

4.1.2 Following Executive Board, there will be further engagement with landowners impacted by the proposals contained within this report. The Council intends to undertake public consultation on the Planning Brief for the Temple District later in 2021.

### **4.2 Equality and diversity / cohesion and integration**

4.2.1 An Equality and diversity cohesion and integration screening assessment is contained at appendix 6.

4.2.2 Whilst recognising the need to consider human rights, this indicates that the issues set out in this report are unlikely to have equality, diversity/cohesion and integration impacts, and that there is no need for a full assessment at this stage. However, this will be kept under review throughout the promotion and implementation of the regeneration activity here, to ensure that any EDCI impacts arising can be measured and mitigated against.

- 4.2.3 It is important to note that while the whole development within the boundary shown in appendix 1 may affect communities generally, this is not the subject of the current decision as the principle of development has already been agreed.
- 4.2.4 As noted above, the work underway to deliver change here will secure major social, economic or environmental benefits which could provide benefit across equality characteristics.

### **4.3 Council policies and the Best Council Plan**

- 4.3.1 Delivering the regeneration within the South Bank is key to realising ambitions in the Best Council Plan regarding sustainable infrastructure, housing and inclusive growth and meeting the city's housing needs through this major plan-led development. The proposals will also deliver against the Council's Inclusive Growth Strategy – delivering on the Big Ideas for place, including 21st century infrastructure, supporting places to respond to economic change and creating jobs close to local communities.
- 4.3.2 The proposals contained within this paper shall also support the city's ambitions contained within the Economic Recovery Framework. In particular, to deliver our transformational projects across the city, and to promote our identity and cultural assets.

#### Climate Emergency

- 4.3.3 The delivery of new mixed use development and infrastructure in the area is a crucial component of the plan-lead approach to growth across the Leeds district as a whole, taking a balanced view of housing and employment need and the allocation of sites to meet the diverse requirements of all residents and communities. The Local Plan and the Site Allocations Plan as part of this have been subject to sustainability appraisal and the Core Strategy has a raft of policies to ensure development comes forward to address carbon reduction, air quality, local environmental benefits and biodiversity gain. The developments will take place within this framework, whilst the forthcoming Planning brief will set out more detail on specific climate related responses.

### **4.4 Resources, procurement and value for money**

- 4.4.1 As highlighted above, the Council's in principle support for use of its section 203 powers is provided on the basis the Council is indemnified for any costs it may incur and it being cost neutral. Independent assurance of any proposed transaction shall ensure that the Council achieves best consideration as per Section 123 of the Local Government Act 1972.
- 4.4.2 With regards to the CPO, the Council is indemnified for all costs relating to any activities relating to the potential CPO action.

### **4.5 Legal implications, access to information, and call-in**

- 4.5.1 The use of s203 powers is a powerful legal tool. Section 203(1) provides for the authorisation for a person to carry out building work notwithstanding that they interfere with private rights such as rights of light where certain criteria are met.

- 4.5.2 There is no requirement that the authorised building work need be carried out by the council itself. As set out above, it's important to underscore that s.203 does not provide for a "power" to override rights, but in practical terms acts as facilitating the automatic authorisation of works notwithstanding the interference with certain rights provided that the specified requirements are met in s203.
- 4.5.3 Section 226 provides for local planning authorities' powers of compulsory acquisition and the circumstances in which they may be exercised. Section 226(1) provides "A local authority to whom this section applies shall, on being authorised to do so by the Secretary of State, have power to acquire compulsorily any land in their area —
- (a) if the authority think that the acquisition will facilitate the carrying out of development, re-development or improvement on or in relation to the land,
  - (b) which is required for a purpose which it is necessary to achieve in the interests of the proper planning of an area in which the land is situated.
- 4.5.4 Section 227(1A) which provides a local authority must not exercise the power under (1) unless they think that the development, re-development or improvement is likely to contribute to the achievement of any one or more of the following objects;
- the promotion or improvement of the economic well-being of their area;
  - the promotion or improvement of the social well-being of their area;
  - the promotion or improvement of the environmental well-being of their area.
- 4.5.5 On the facts available, these test are met and there is nothing in principle preventing such acquisition of land by the council for the purposes of engaging the aforementioned provisions which override restrictions on development. The next steps must be to consult the affected parties in detailed preparation of this case which will shape the future resolution and later report on this matter.
- 4.5.6 The decisions contained within these report are subject to call-in. The information contained in Appendix 5 is exempt under Access to Information Rule 10.4 (3) as it contains information relating to the financial or business affairs of a particular person (including the Council).
- 4.5.7 It is considered that the public interest in maintaining the content of Appendix 5 as exempt outweighs the public interest in disclosing the information as doing so would prejudice the Council's commercial position and that of third parties in the negotiation of a land transaction, should they be disclosed at this stage.

## **4.6 Risk management**

- 4.6.1 The proposals contained in this paper present complex issues concerning human rights of third parties to deliver comprehensive development across a range of statutory powers available to the Council. There is therefore a risk that impacted third parties may object to the proposals, and may seek to legally challenge the proposals albeit at this stage the Council is not making a final or formal resolution to exercise its CPO or 203 powers.
- 4.6.2 The proposals have accordingly been subject to comprehensive legal review both from internal and external legal advisors. Furthermore, advice on the approach to the use of Section 203 powers has been provided by Counsel and their advice has

accordingly shaped the nature of the proposal set out in this paper. As set out, the Council will be fully indemnified against any costs should a third party seek to progress a legal challenge.

- 4.6.3 The co-ordination of all aspects of the work relating to the regeneration of the area shown in appendix 1 is managed to ensure robust and co-ordinated programme management, engagement and consultation.

## **5 Conclusions**

- 5.1 The delivery of comprehensive development across the Temple district is a priority for the city and can deliver substantial economic, social, or environmental well-being of the area. The proposals contained within this report could help to secure much needed new workspace in this district, as well as further build momentum towards the sustainable re-use of Temple Works.

## **6 Recommendations**

- 6.1 Executive Board is asked to

- i) Note ongoing efforts to secure comprehensive development within the Temple District detailed at appendix 1 to contribute to the economic, social, or environmental well-being of the area.
- ii) Agree to the amended initial and potential Compulsory Purchase Order boundary as shown in appendix 2, relating to the strategy to secure the re-use of Temple Works
- iii) Request that the Director of City Development brings back a paper later in 2021 on agreements to secure the future of Temple Works, the scope and progress on the British Library North, and the potential of a formal CPO resolution should private treaty negotiations not succeed.
- iv) Support the principle of the Council exercising its statutory powers and entering into the proposed land transaction under Section 203 Housing and Planning Act 2016 and section 227 Town & Country Planning Act 1990 as per the proposal contained at paragraphs 3.38-3.39 subject to the conditions outlined at paragraph 3.50-3.51, the development of legal agreements as per exempt appendix 5 and agree that the Director of City Development consults with each of the affected landowners
- v) Request that the Director of City Development reports back with a further report on the section 203 proposal with recommendations on the formal resolution for the Council to utilise these powers.

## **7 Background documents<sup>1</sup>**

- 7.1 None.

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<sup>1</sup> The background documents listed in this section are available to download from the council's website, unless they contain confidential or exempt information. The list of background documents does not include published works.