

Cabinet	 TOWER HAMLETS
14 December 2022	
Report of: Ann Sutcliffe, Corporate Director of Place	Classification: Unrestricted
Development of London Dock School – Appropriation for Planning Purposes and use of Section 203 Powers (Rights of Light)	

Lead Member	Councillor Saied Ahmed, Cabinet Member for Resources and Cost of Living
Originating Officer(s)	Stephen Shapiro – Acting Director, Property and Major Programmes Roselyn Unegbu – Head of Capital Delivery Richard Fasunloye - Project Manager, London Dock School Erald Pula – Senior Property Lawyer
Wards affected	Wapping
Key Decision?	Yes
Reason for Key Decision	Financial threshold / Significant impact on wards
Forward Plan Notice Published	19 August 2022
Strategic Plan Priority / Outcome	3 - Accelerating Education

Executive Summary

- 1.1 This report seeks the agreement of the Mayor by way of report to Cabinet to authorise the Corporate Director of Place to appropriate for planning purposes under section 122 of the Local Government Act 1972 (“LGA 1972”) the Council’s property known as the London Dock School (“the Land”), edged red on the plan attached.
- 1.2 Appropriation is necessary for the purpose of facilitating the construction on the Land of a new secondary school building. The Council is the freeholder of the Land (which is held within the General Fund Land). The Council entered into an underlease on 7 August 2020 with St George (“the Underlease”), who are the developers as required by the terms of the Section 106 Agreement dated 26 March 2014, following which, Cabinet authority was received on 31 July 2019 to confirm the underlease C to permit the Council to provide education for 1,200 pupils.

- 1.3 Planning permission ref. **PA/19/00766** was approved by Planning on 18 February 2020. The main purpose was to provide a secondary school, with six forms of entry and a sixth form, a basement, public realm and school play space facilities, parking and associated highways works.
- 1.4 On a separate issue regarding the land, the Council is currently in discussions with St George and the Department for Education in respect of the final design and lease matters, notably the District Heat Network (DHN) and how the school is to be connected. However, one of the key issues which needs addressing is the requirement to appropriate the Land for planning purposes, which will override third party rights, including easements, covenants and in particular, Rights to Light which the Land is currently subject to. All third-party rights can be overridden by Section 203 of the Housing and Planning Act 2016 (“the Act”), subject to compensations being paid to affected parties.
- 1.5 The Council, through its Rights of Light consultants, Delva Patman Redler (“DPR”), has been investigating the effect that the Council’s proposed development will have on adjoining owners and has established that there are several parties that may have the benefit of Rights of Light, which will be affected by the new development. DPR have advised there are 7 potentially affected neighbouring buildings, one of which has raised the prospect of an injunction. See appendices for details and for the latest financial advice in respect of these claims.
- 1.6 To implement the development of the Land, it is necessary for the Council to appropriate it for planning purposes. The appropriation by the Council will allow the Council to interfere with the existing rights, but not affect the rights of third parties to compensation. Compensation negotiations are a time-consuming process and to ensure that the construction of the new schools on the Land are not delayed so that the pupils can move into the new school within the agreed timescales, approval is sought to appropriate to ensure that the development is not subject to injunction.
- 1.7 The approval of the Mayor is also being sought to authorise the Corporate Director of Place to negotiate and enter into final settlement agreements with affected parties regarding the level of compensation.
- 1.8 As highlighted in section 1.5 of this report, one of the parties within the 7 affected buildings claims that the development of the land will cause material interference with their rights of light and have issued a pre-action claim and potentially seeking an injunction against the development.
- 1.9 To resolve the issue of the injunction and other potential future claims it is recommended that the Council uses its powers to appropriate the Land under Section 122 of the LGA 1972, which would effectively override these Rights of Light claims under Section 203 of the Act.
- 1.10 Confidential/ exempt information is contained within the exempt Appendices 1, 4 and 5 as they detail information relating to the financial or business affairs of any person (including the authority holding that information).

1 RECOMMENDATIONS:

The Mayor in Cabinet is recommended to:

1. Delegate authority to the Corporate Director of Place to appropriate the Land for planning purposes in accordance with Section 122 Local LGA 1972 and the subsequent use of the Council's powers under s203-s206 of the Housing and Planning Act 2016 to override Rights to Light of neighbouring properties that may be infringed by the development of the Land.
2. Delegate authority to the Corporate Director of Place to agree any potential settlement of Rights of Light claims with an affected party, together with any associated/professional fees.
3. Authorise the Divisional Director, Legal to enter into any legal agreements considered necessary or desirable for the Council to put in effect the recommendations in this report.
4. Note that the cost of the proposed settlement of Rights of Light compensation payments and associated/professional fees will be met from the capital budget for the London Dock School scheme.

2 REASONS FOR THE DECISIONS

- 2.1 The Council has instructed a Rights of Light consultant DPR to carry out a detailed analysis to identify surrounding properties which would suffer an adverse impact to the level of light currently maintained. They have advised a total of **7** neighbouring properties are likely to experience potential Rights of Light infringements.
- 2.2 These 7 properties comprise:
 - sites owned by LB Tower Hamlets
 - A school
 - A block of flats
 - commercial offices
 - A recently developed mixed use block of ground floor commercial and residential upper parts
- 2.3 DPR have advised that the two sites owned by LBTH and the school have an education/social function use and therefore are not actionally affected
- 2.4 DPR has also assessed the level of light infringement to each individual property that is affected and provided details of the potential settlement budget for the release of these rights. Full details of the affected parties, settlement budgets as well as negotiations are set in the exempt Appendices. Due to the high risk of an injunction to prevent the scheme

being delivered and the associated settlement costs, the Council needs to consider appropriate use of its powers to mitigate these risks.

3 ALTERNATIVE OPTIONS

- 3.1 Do nothing option: if the Council decides not to appropriate the Land then there is the potential that affected private property owners could continue injunction proceedings which could stop the construction of the project or significantly delay its delivery. As a result, this would put at risk the Council's approved budget to deliver this scheme and impact the Council's education policy, whilst jeopardising 1,200 school places as part of this approved scheme.
- 3.2 If the development is not materially commenced 18 months from date of Underlease (being February 2022) St George can serve three months' notice to determine the Underlease. St George must pay the termination sum of £4 million plus. Legal has been informed by the project team that the works have "materially commenced".
- 3.3 If the development of the school is not completed entirely by the 7th November 2025, St George can serve three months' notice to determine, subject to St George paying the termination sum of four million pounds. There is however a desire to have completed the works in time for the academic year commencing September 2023
- 3.4 As detailed at paragraph 4.2, the works on the Land have commenced and if an injunction is ever pursued by an affected party, then the Council will have to pay compensations to the contractors.
- 3.5 The carrying out of the development is dependent upon adhering to a programme. That programme cannot be met unless those entitled to Rights of Light agree to infringements or the infringements are authorised by Section 203. The Council needs to maintain its programme to lawfully implement the development and enable the school to open for the 2023 academic year. If the proposed development were not to come forward due to an inability to implement the planning permission, the education policy for the borough would be in jeopardy as these places would need to be distributed across the Borough.

4 DETAILS OF THE REPORT

- 4.1 Increasing the supply of education provision is a significant priority for the London Borough of Tower Hamlets, with *Accelerating education* being a priority in the Strategic Plan 2022-26. The council has a statutory responsibility to ensure there are sufficient school places available for children and young people in the right areas and at the right time to meet demand, whilst maintaining a focus on high quality education as well as enabling a culture of high performing and financially sustainable schools. This includes both maintained and academy schools. London Dock has been identified by both the

council and Department for Education as a key development site for the provision of the additional secondary school places needed, in response to the borough's pupil population growth. London with a population of approximately 8 million people, is expected to grow to over 10 million over the next two decades.

- 4.2 In East and Southeast London, an increase of 600,000 is forecasted to reach a population of 2.9 million by 2031. The 2021 Census data showed that Tower Hamlets has the fastest growing population of any Local Authority Area across England and Wales. Between 2011 and 2021 the local population has grown by 56,200 (22.1%) to 310,300.
- 4.3 Tower Hamlets is the densest populated borough across England with 15,695 residents per square kilometre compared to an average of 424 per square kilometre in England – that is over 37 times higher than the mean average population for England.

Public Dialogue

- 4.4 The LGA 1972 and the Act do not set any specific procedure for implementing appropriation and the powers of Section 203 and there is also no statutory procedure for consultation for use of these powers. As a matter of good practice, the Council through DPR has contacted affected parties who are currently in discussions with their surveyors and other representatives, but there is some distance between their respective positions.

Costs and Professional Representation

- 4.5 Although it is not necessary for the Council to pay affected parties professional fees (legal and surveyor costs) it is prudent to do so to encourage parties to surrender rights voluntarily before the Section 203 takes effect. This approach has also been taken by private developers and Housing Associations in the past on the basis an agreed figure would be provided (to cover legal and professional fees) for the affected party to seek advice and caveated those further costs will only be paid upon successful completion of a deed of release/surrender before the Section 203 is implemented. This mitigates risk in terms of spending money without achieving the objective.

5 EQUALITIES IMPLICATIONS

None Anticipated

6 OTHER STATUTORY IMPLICATIONS

- 6.1 This section of the report is used to highlight further specific statutory implications that are either not covered in the main body of the report or are

required to be highlighted to ensure decision makers give them proper consideration. Examples of other implications may be:

- Best Value Implications,
- Consultations,
- Environmental (including air quality),
- Risk Management,
- Crime Reduction,
- Safeguarding.
- Data Protection / Privacy Impact Assessment.

6.2 None Anticipated.

7 COMMENTS OF THE CHIEF FINANCE OFFICER

- 7.1 This report is seeking approval to appropriate for planning purposes under section 122 of the Local Government Act 1972 ("LGA 1972") the Council's property known as the London Dock School and the subsequent use of the Council's powers under s203-s206 of the Housing and Planning Act 2016 to override Rights to Light of neighbouring properties that may be infringed by the development of the Land
- 7.2 There are seven neighbouring properties that are potentially impacted by Rights of Light and could be due payment and the scale of these payments have yet to be agreed. Any payments will represent capital expenditure
- 7.3 The approved capital budget for the delivery of the school is currently £62.7m, funded by £47m grant, £5m S106 and £10.7m CIL. A further £2.1m is currently being sought due to inflationary cost increases in delivering the project and if approved would increase the budget to £64.8m
- 7.4 Any costs associated with rights of light payment will need to be contained within the approved capital budget and additional budget sought if this is not possible.
- 7.5 The Council has instructed a Rights of Light consultant DPR to carry out a detailed analysis to identify surrounding properties which would suffer an adverse impact to the level of light currently maintained. They have advised a total of **7** neighbouring properties are likely to experience potential Rights of Light infringements.
- 7.6 DPR has also assessed the level of light infringement to each individual property that is affected and provided details of the potential settlement budget for the release of these rights. Full details of the affected parties, settlement budgets as well as negotiations are set in the exempt appendices. Due to the high risk of an injunction to prevent the scheme being delivered and the associated settlement costs, the Council needs to consider appropriate use of its powers to mitigate these risks.

8 COMMENTS OF LEGAL SERVICES

- 8.1 Legal Services have been consulted and comments as follows:
- 8.2 The Council has powers under Section 122 of the LGA 1972 to appropriate land belonging to the Council which is no longer required for the purpose for which it was held immediately before the appropriation, but such appropriation is “subject to the rights of other persons in over or in respect of the land concerned”. However, if the Land is appropriated to planning purposes, the Council has the power to interfere with those rights. The new purpose for which the Land is required is for the development and improvement of it in accordance with the planning permission granted.
- 8.3 Section 203 of the Housing and Planning Act 2016 says that a local authority can override easements and other rights affecting the Land such as rights of way and light that would impede the development.
- 8.4 There are four requirements that must be fulfilled in order for Section 203 to be used:
- a. the Land must be acquired or appropriated by a local authority for planning purposes (the Land will be appropriated);
 - b. there is planning consent for the building or maintenance work or use. planning permission has been obtained.
 - c. a local authority could (if not already the owner) acquire the Land compulsorily for the purposes of carrying out works (including construction and maintenance works), or for the use of the land permitted by the relevant planning consent.
 - d. the work or use in question relates to the purposes for which the land was appropriated.
- 8.5 The effect of Section 203 is to enable the development to proceed and authorises the interference of third-party rights. However, the Council is liable to pay compensation for any interference with a relevant right or interest or breach of a restriction that is authorised by Section 203 and this is addressed in Section 204.
- 8.6 Section 204(2) confirms that compensation should be calculated on the same basis as compensation payable under section 7 and 10 of the Compulsory Purchase Act 1965. The amount of compensation payable is the diminution in the value of the affected interest. Any dispute about compensation payable may be referred or determined by the Upper Tribunal.
- 8.7 One of the requirements for the use of Section 203 is that the relevant authority must show that “it could acquire the land compulsorily” (whether compulsorily or by negotiation for the purpose of the development in question). It will involve an interference with Human Rights under article 1 of protocol of the European

Convention on Human Rights and where residential properties are affected (right to peaceful enjoyment of your property), also under article 8 (right to family and private life). Prior to the use of Section 203, the intention is that private treaty negotiations will take place with those with an affected interest. A summary of these negotiations is provided as an exempt appendix. However, the right to peaceful enjoyment of property under article 1 is a qualified right and not an absolute right. Article 8 is also a qualified right and article 8(2) permits 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.”

- 8.8 The Land benefits from planning permission and there are no further planning impediments. The approved scheme will contribute to the much-needed school provision for the borough and benefit those currently on the school register, with a temporary site for the 2022-23 academic year being used. Officers of the Council believe the benefits of the development outweigh the infringement of article 1 and 8. Officers have considered that the development will promote or improve the economic well-being, social well-being or environmental well-being of the area.
- 8.9 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 Council resolves to exercise its powers to override these rights through appropriation to facilitate the development.
- 8.10 Without the exercise of appropriation, parties who are affected by the diminution of their Rights to Light have the ability to bring injunction proceedings to prevent the development. This could potentially halt the project and will definitely result in a delay to the delivery of the development.
- 8.11 Once the Land is validly appropriated to planning purposes and since planning permission has been granted, the Council will be empowered under Section 203 of the Act to override existing rights, without the possibility of legal challenge. Section 204 of the Act ensures that all Rights of Light claims are resolved by payment of statutory compensation to affected parties.

Linked Reports, Appendices and Background Documents

Linked Report

None

Appendices

1. Tracker for all 7 affected properties pertaining to stages for negotiation (restricted)
2. Plan for all 7 affected properties.
3. Technical plan prepared by AWH shown edged blue.

4. Technical table prepared by AWH which shows right to light reduction affecting 1 Telford, as a result of the development of the school (restricted)
5. Negotiation Detail Tracker (restricted)

**Background Documents – Local Authorities (Executive Arrangements)
(Access to Information) England Regulations 2012**

None

Officer contact details for documents:

N/A