

READING BOROUGH COUNCIL

REPORT BY HEAD OF LEGAL AND DEMOCRATIC SERVICES

TO:	POLICY COMMITTEE		
DATE:	5 DECEMBER 2016	AGENDA ITEM:	11
TITLE:	STATION HILL DEVELOPMENT - POTENTIAL ACQUISITION OF LAND FOR PLANNING PURPOSES		
LEAD COUNCILLOR:	COUNCILLOR PAGE	PORTFOLIO:	STRATEGIC ENVIRONMENT, PLANNING AND TRANSPORT
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1. **PURPOSE OF REPORT AND EXECUTIVE SUMMARY**

- 1.1 This report seeks approval from the Policy Committee for the acquisition of land for planning purposes by agreement under Section 227 of the Town and Country Planning Act 1990 (as amended) ("Section 227") enabling the operation of powers under Section 203 of the Housing and Planning Act 2016 ("Section 203") to facilitate the carrying out of the redevelopment of land at Station Hill, Reading RG1 1NF as shown edged black on the plan at **Appendix 1** and referred to in this report as the Station Hill 3 Site.

**Members will recall considering a comprehensive report on this matter at their meeting held on 26<sup>th</sup> September this year and Members should bring and consider that report and its Appendices ("the Previous Report") alongside this report as it contains relevant information that remains unchanged namely the paragraphs on (a) Planning and Policy Background (b) the Rights to Light Issues and the Request (c) Consideration and Discussion (the issues are updated in the First Schedule of this report) (d) EIA and Human Rights (e) Legal Implications (f) Financial and Risk Implications and the First Schedule (which summarises Section 203). The Previous Report can be found on the Council's website at:**

**<http://www.reading.gov.uk/article/9598/Policy-Committee-26-SEP-2016>** (full Station Hill report at item 10)

- 1.2 At the meeting on the 26<sup>th</sup> September Members resolved Minute 37 as follows:-

*(1) That it be agreed in principle to authorise acquisition of an interest in the Station Hill 3 Site by the Council under Section 227 of the 1990 Act, in order to engage powers under Section 203 of the 2016 Act for the planning purposes of facilitating the carrying out of the Station Hill 3 Scheme authorised by the 2016 Permission (in its current form or as it may be varied or amended) and subsequent disposal of that interest to Sackville (or an associated company) under Section 233 of the 1990 Act;*

*(2) That the Director of Environment and Neighbourhood Services submit a report to the meeting on 28 November 2016 to seek approval to confirm the 'in principle' decision of the Committee set out in resolution (1) above, provided that the Council was satisfied that Sackville had used all reasonable endeavours to remove injunction risks by negotiating the release of affected rights of light by agreement with the owners of the remaining three Affected Properties and that those entitled to such rights of light were not prepared by agreement (on reasonable terms and within a reasonable timescale) to permit infringements of those rights in time to achieve the development programme as expressed in the Request Letter.*

- 1.3 The purpose of this report is to update Members on the progress of negotiations between the Owners of the Station Hill 3 Site (now Station Hill North BV and Station Hill South BV (the successors in title to Sackville)) and the Affected Owners of the remaining three properties referred to in paragraph 4.5 of the Previous Report.

## **2. RECOMMENDED ACTION**

- 2.1 It is recommended that the Policy Committee resolves with effect from 31<sup>st</sup> December 2016 to (a) authorise acquisition of an interest for a nominal consideration in the Station Hill 3 Site by the Council under Section 227 of the Town and Country Planning Act 1990 Act in order to engage powers under Section 203 of the Housing and Planning Act 2016 Act for the planning purposes of facilitating the carrying out of the Station Hill 3 Scheme authorised by the 2015 and 2016 Permissions (in their current form or as may be varied or amended) provided a suitable Deed of Indemnity in favour of the Council is in place and (b) the subsequent disposal of that interest to Station Hill North BV and Station Hill South BV (or an associated company) under Section 233 of the Town and Country Planning Act 1990 and that the terms and completion of the acquisition and disposal referred to above be delegated to the Chief Valuer and the Head of Legal and Democratic Services.
- 2.2 It is further recommended that the Policy Committee resolves that Station Hill North BV and Station Hill South BV shall undertake to use all reasonable endeavours to conclude Deeds of Release with the owners of Affected Properties on the Heads of Terms that have been agreed or where a settlement has been agreed in principle prior to or as at the date of this meeting.

## **3. BACKGROUND**

- 3.1 The relevant background information in the Previous Report that remains unchanged is set out in paragraph 1.2 above. This report simply sets out the progress made to date between the Owners of the Station Hill 3 Site and the remaining Affected Owners since the last meeting and amends where appropriate the recommendation.
- 3.2 The 3 remaining Affected Properties, the Affected Owners and their representatives as at 26<sup>th</sup> September were:-
- 20-30 Greyfriars Road (McKay Securities PLC represented by Shoosmiths)
  - 8-10 Greyfriars Road (CIP Property Ltd represented by Pinsent Masons)
  - 39-40 Friar Street (Winstone Group represented by GVA)
- 3.3 Officers are pleased to report that since the meeting in September substantial progress has been made in all three cases. On 28<sup>th</sup> October the Council were informed that matters had been settled in the case of 20-30 Greyfriars Road and that a Deed of Release had been completed on the 27<sup>th</sup> October 2016. On 11<sup>th</sup> November 2016 Officers were advised by Messrs Pinsent Masons that their client CIP Property Ltd, who is the Affected Owner of 8-10 Greyfriars Road had, subject to contract, agreed terms with the Owners of the Station Hill 3 Site which resolved the rights of light issues between them. The terms of the agreement are now being documented by the parties.
- 3.4 However no agreement has been reached in respect of 39-40 Friar Street. The latest e-mail from GVA on behalf of the Winstone Group suggest that progress is being made although hindered by the failure of the Owners of the Station Hill 3 Site to produce the developers financial appraisal and the technical assessment results for other properties.
- 3.5 The latest correspondence between the representatives of the Owners of the Station Hill 3 Site and GVA on behalf of the Winstone Group in respect of current negotiations on 39-40 Friar Street have been circulated separately to Members attached to a Part 2 Report as such correspondence contains exempt/confidential information.
- 3.6 The Consideration and Discussion issues that remain relevant to the Affected Owners of 39-40 Friar Street are set out in detail in the First Schedule to this report.

#### 4. CONTRIBUTION TO STRATEGIC AIMS

- 4.1 The Station Hill 3 Scheme meets priorities 4 and 5 of the Corporate Plan as it helps contribute to keeping the town clean, safe, green and active and provides new development and infrastructure to help the economy.

#### 5. COMMUNITY ENGAGEMENT AND INFORMATION

- 5.1 The Station Hill 3 Scheme applications for outline planning permission were the subject of full public consultation by the Local Planning Authority prior to the decisions being made which resulted in the 2015 and 2016 Permissions.

5.2 All owners of Affected Properties have been consulted on the proposal which is the subject of this report.

## 6. INTERNAL CONSULTATIONS

6.1 The Head of Planning, Development and Regulatory Services had been consulted in the preparation of the Previous Report.

## 7. CONCLUSIONS

7.1 The exercise of the power is only to be used as a last resort. It is considered that, on balance, the acquisition of the Station Hill 3 Site for the planning purpose of the development which is the subject of the Station Hill 3 Scheme should now be approved on the following basis:-

- It is a development which is in the public interest both in respect of the current need to regenerate what is a prominent town centre site, largely unused and derelict and the public benefits that it will bring to the town as a whole.
- The planning position is settled given the planning background and the recent approval of reserved matters.
- Whilst the Winstone Group have stated that they would not invoke an injunction and have no intention of doing so the threat of an injunction is an ever present and construction of Station Hill will be thwarted until such time as there is no possibility of such an action.
- As said in the Previous Report it is accepted that the development programme is a reasonable one but given the lengthy negotiations which have taken place to date it is considered that an agreement in principle and on reasonable terms with the Affected Owner of 39-40 Friar Street should be achievable by the end of the year. If it is not then the development programme will then be at risk which is not in the public interest given the expressed importance of the Scheme.
- The Winstone Group will be entitled to statutory compensation under Section 204 of the 2016 Act in the event that no agreement is reached by the end of the year.
- All relevant considerations have been fully and properly addressed and on balance the outcome of these matters supports the recommendations in Section 2 of the report.

## 8. BACKGROUND PAPERS

The Previous Report to Policy Committee on 26<sup>th</sup> September 2016

## FIRST SCHEDULE

### Introduction

1. This appears to be a case for the application of the Section 203 power if Members consider that the Station Hill 3 Scheme is being delayed or is likely to be delayed by the continuing dispute over third party rights to light. This is plainly a much needed development in the public interest both in respect of the current need to regenerate what is a prominent town centre site, largely unused and derelict (the demolition phase has been undertaken recently at a cost in the order of £10m). The 2015 and 2016 Permissions when read together with the policy material supporting them clearly establishes the public interest in the execution of the Station Hill 3 Scheme. The benefits of the Station Hill 3 Scheme are summarised at paragraph 3.7 of the Previous Report and in respect of the planning obligations in Appendix 2 to that report.
2. Further explanation is to be found in the Previous Report supporting the resolution of the Policy Committee in 2015 (Appendix 6) and the Request Letter (Appendix 3). The respective reports to the Planning Application Committee that resolved to grant the 2015 and 2016 Permissions spell these matters out in some detail. The reports disclose that the matter has been the subject of careful scrutiny which has included taking professional advice on the affect of the proposals on the sunlight and daylight enjoyed by neighbouring premises (which would have included 39-40 Friar Street) to identify the impacts on a case by case basis. The resultant analysis concluded that on balance such harm as was identified was not sufficient to justify the refusal of the application for planning permission under consideration. No material has been placed before the Council by anyone including the Winstone Group to suggest that there has been any substantive change in circumstances so that it should not continue to rely upon the assessment made of the issue when granting the 2015 and 2016 Permissions.
3. In addition the supporting evidence set out in the Request Letter (Appendix 3) and the August 2016 Report (see Appendix 5(a)) if accepted by Members, identifies why early resolution of these outstanding disputes is required if the development is to proceed in time so that it can assist the town to gain the benefits associated with the advent of Crossrail in 2019 and the anticipated increased demand for new purpose built commercial floorspace of the quality of that comprised in the scheme.
4. The report to the Policy Committee of July 2015 had regard to what was then referred to as the "*generally accepted practice*" in the use of these powers that the policy test for compulsory acquisition of the land in point was met namely, that there was "*a compelling case in the public interest*" demonstrated to engage the power.
5. The primary relevant consideration for the exercise of the Section 203 power in this case is whether there is compelling case in the public interest for the Council to exercise the power so that the Council would be authorised to compulsorily acquire the site if it so desired.

### The compelling case

6. A number of considerations come into play under this heading. First, whether the development that the exercise of the power is intended to support is itself in the public interest. The fact that it complies with the statutory development plan, is seen as a key strategic site in the town and has recently been granted planning permission puts this point beyond question unless there has been some material change in circumstances since the last grant of permission. No such change is suggested in the representations from the Winstone Group and so this test is satisfied. In addition the use of Section 227 to enable the operation of Section 203 will facilitate the carrying out of the Station Hill 3 Scheme which will contribute to the achievement and improvement of the economic well-being of Reading as a whole (for example the provision of retail units and offices) and of the environmental and social well-being of this part of Reading (for example through the provision of public realm and productive use of a largely unused and derelict site).
7. Secondly, it is convenient to consider the related question namely, the significance of the fact that action under Section 203 is intended to interfere with the legal rights to light owned by the relevant landowners. Here it is important to note that the primary concern of the planning system is with the quality of light enjoyed by the Affected Properties in terms of providing appropriate amenity for their use, whether residential, office or commercial, not with the scale of compensation that may be appropriate to be awarded to the owners for the interference with their rights of light. It has been seen from the reports to the Planning Applications Committee that the consideration of the effect on amenity was part of the assessment of the likely effects of the proposal at the time of the grant of the permissions both in 2015 and 2016. The effect on a private right which falls short of justifying a reason for refusal is a material consideration in the decision making process, but not one that would ordinarily bear sufficient weight so as to prevent the Council from taking action under Section 203.
8. The planning system allows for compensation to be paid, in qualifying cases, to those whose amenities are adversely affected by such proposals. That is how the statutory scheme allows for account to be taken of this harm, including the engagement of the First Article to the First Protocol human rights of the landowner, if appropriate. The effect of the exercise is to override the right to seek an injunction and claim damages for the interference with the right in question and to substitute for those common law rights the right to seek compensation under the statutory scheme expressed in Section 204 of the 2016 Housing and Planning Act.
9. When considering the potential harm to the owner of the right to light it is appropriate to take into account that on balance it was considered appropriate by the Council acting as Local Planning Authority to grant planning permission in the public interest despite the perceived impact to the flow of light to the Affected Properties. It is also appropriate for Members to take account of the fact that if it exercises this power the owner of the right to light which is overridden will qualify for the payment of compensation assessed by a means considered appropriate by Parliament for that purpose. The harm potentially arising to the owner of the relevant rights to light is not monetary since the scheme under the section must be presumed to offer fair compensation to those adversely affected in this way. The exercise of the power would however

deprive that owner from seeking an injunction to prevent the development proceeding in the manner authorised in the 2015 and 2016 Planning Permissions in order to protect its private law right to light. But this is the situation that previously Section 237 of the 1990 Act and now Section 203 of the 2016 Act were enacted to avoid.

10. The benefits of the Station Hill 3 Scheme summarised at paragraph 3.7 of the Previous Report and in respect of the planning obligations in Appendix 2 need to be balanced against the interference with rights to light. As demonstrated by Sackville in the Request Letter the Station Hill 3 Scheme cannot be altered to avoid right to light infringements and if the scheme does not proceed the benefits identified will not be delivered. However the Winstone Group as the Owner of the Affected Property would be compensated under the statutory scheme.
11. The third consideration is whether there is a need to act now or whether it would be appropriate to delay any consideration of the application of the Section 203 power to a later date to allow more time for the discussions to continue to a fruitful conclusion if at all possible.
12. In considering this question Members should note that the avoidance of continuing delay is part of the harm that Section 203 was enacted to avoid. Whilst as a generality it may be reasonable to give the parties a period of grace before taking action to 'clean' the title of these private rights, there is no such statutory requirement. Members are also entitled to take the view that it is not competent to judge where the merits lie in the disputes between the owners of the Station Hill 3 Site and the owners of 39-40 Friar Street, the Winstone Group. Unlike the Court, the Council is not equipped in any sense to determine such disputes. The principal question for Members is whether any such dispute is likely to impede the progress of the Station Hill 3 Scheme to such an extent that it is appropriate to take action under the Section 203 power to prevent further delay that would harm the public interest in the production of the development that has been granted planning permission. There is therefore an overall judgment to be made weighing all the factors including the representations of the Winstone Group objecting attached in the Part 2 Report to see whether there is a compelling case to act in the public interest.

**Summary of Representations made on behalf of the Winstone Group**

13. The previous representations were summarised in the Previous Report and it can be seen from the latest representations how matters have evolved over time. The key points made are as follows:-
  - They are close to agreement.
  - There is no threat of an injunction.
  - They have been denied the developers financial appraisal and the technical assessment results for other properties.
  - They are prepared to sign a confidentiality agreement in respect of financial appraisal and the technical assessment results.
  - There is no need to use the statutory powers.

- They are prepared to accept the opinion of a third party to determine the level of compensation.

Officers note the points made and consider that one final short period of grace should be given to see if an agreement can be reached before the Council exercises its statutory powers. In the meantime the threat of an injunction remains leaving progress of the Station Hill 3 Scheme adversely affected given the timescales and benefits referred to in the Previous Report and here. It is important to emphasise that the statutory scheme exists to fairly compensate Affected Owners so that if no agreement is reached by the end of the year that will apply to the Winstone Group.

### Human Rights

14. Human rights issues arise in respect of the proposed arrangements. An acquiring authority should be sure that the purposes for which a site is to be acquired and for which rights are to be overridden sufficiently justify interfering with the human rights of those whose land interests will be affected.
15. Under the Human Rights Act 1998 the Council is required to act in accordance with the European Convention on Human Rights (ECHR) in deciding whether or not to engage Section 203. Article 1 of the First Protocol of the ECHR provides that every natural or legal person is entitled to peaceful enjoyment of their possessions. Acquisition of property under Section 227 which engages Section 203 to allow interference with rights of light involves interference with a (natural or legal) person's rights under this Article.
16. However, the right to peaceful enjoyment of possessions in that Article is qualified. The deprivation of a person's possessions is permitted where it is in the public interest and subject to the conditions provided for by law and by the general principles of international law.
17. Furthermore in cases, such as this, where rights to light are enjoyed by residential properties, Article 8 is engaged (the right to respect for private and family life and a person's home). 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"*.
18. As established by case law, there must be a balancing exercise: the interference with an individual's private rights must be necessary and proportionate to the public interest of facilitating the Station Hill 3 Scheme. In this context "proportionate" means that the interference must be no more than is necessary to achieve the identified legitimate aim. A fair balance must be struck between the rights of the individual and the rights of the public.
19. In the case of the Station Hill 3 Scheme it is considered that, in light of the public benefits of the Station Hill 3 Scheme which are described above, the public interest in facilitating the Station Hill 3 Scheme outweighs the rights of the individuals to peaceful enjoyment of their possessions and, in relation to

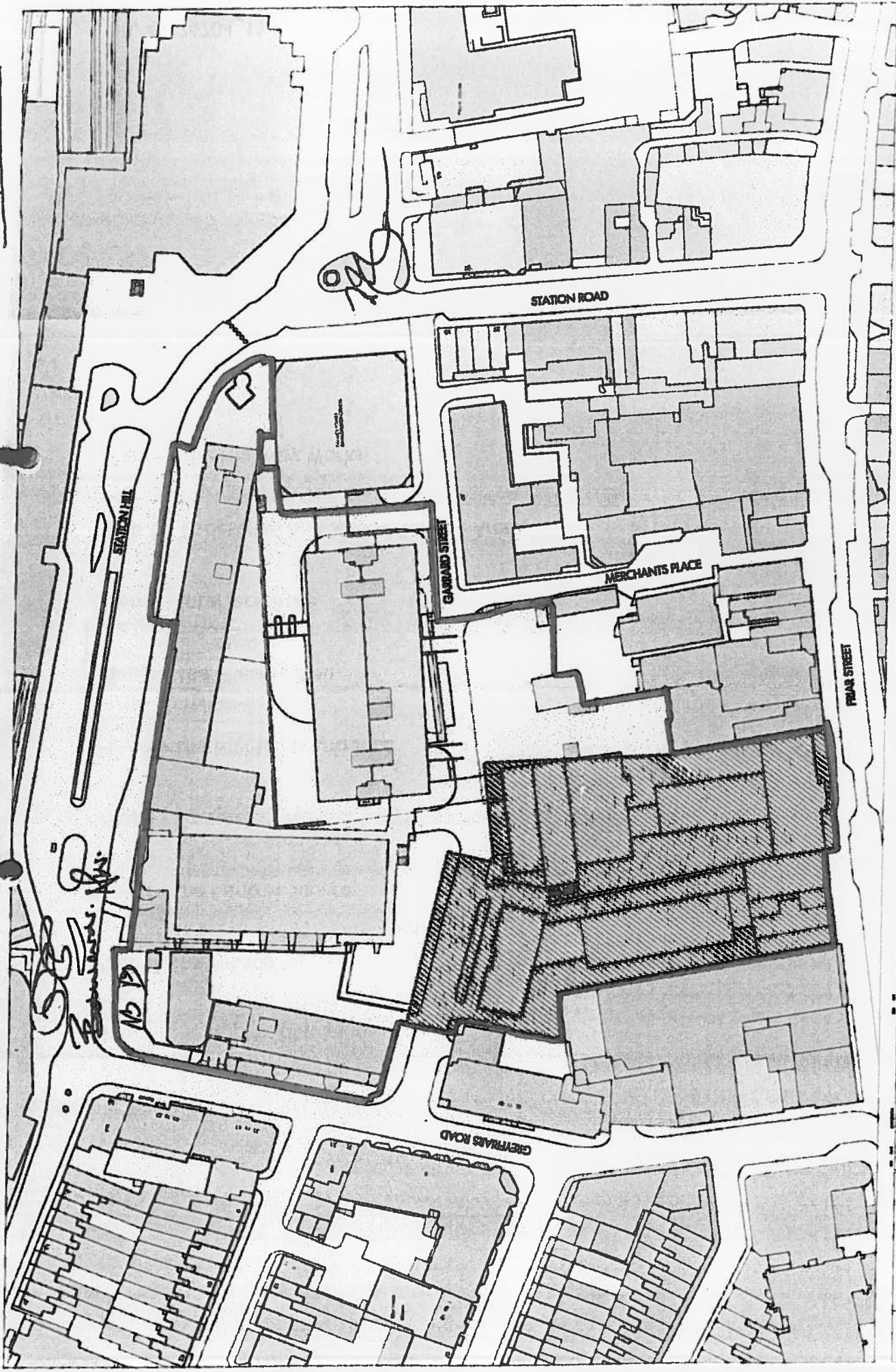


residential properties, their right for private and family life and home, and that the proposed engagement of Section 203 would amount to a proportionate interference in all the circumstances. In this regard the availability of statutory compensation to those who are deprived of their rights of light is of relevance to the issue of proportionality, as is the fact that any agreements in principle would in any event be honoured by Station Hill North BV and Station Hill South BV.

**Whether acquisition will facilitate the carrying out of the Station Hill 3 Scheme**

20. The Council have granted the 2015 and 2016 Permissions having secured the planning benefits summarised at Appendix 2 in the Previous Report. Sackville has set out in detail in the Request Letter and the subsequent correspondence including the Market Report why it is important to commence the scheme sooner rather than later. However this cannot be carried out unless all the owners of the Affected Properties agree to right of light infringements (or the infringements are authorised by Section 203). Given the time that has elapsed but recognising that some progress has been made a period of grace to the end of the year to conclude negotiations is considered appropriate but beyond that there will remain considerable uncertainty as to whether a reasonable start on the substantial construction of the scheme could commence. If the Station Hill 3 Site is acquired so as to engage Section 203 Station Hill North BV and Station Hill South BV will have sufficient confidence to obtain funding and proceed in 2017 to meet their development programme. Therefore the acquisition by the Council at that point will facilitate the carrying out of the Station Hill 3 Scheme.

Appendix 1



**STATION HILL, BARRACKS**  
**8106 AGREEMENT: PLAN 01**  
**APPLICATION BOUNDARY**  
**698\_07\_001**

Site and Building  
 2D/3D Model  
 2D/3D Text  
 2D/3D Image  
 2D/3D Annotation  
 2D/3D Dimension  
 2D/3D Schedule  
 2D/3D Table  
 2D/3D Table of Contents

APPENDIX NO. 001

**APPLICATION BOUNDARY**  
**NOTE: TELECOM HOUSE BOUNDARY APPLICATION BOUNDARY**

NO.	REVISION	DATE	BY	APPROVED BY

**ILLUSTRATIVE DRAWING**

APPENDIX NO. 001