

<p style="text-align: center;">London Borough of Hammersmith & Fulham</p> <p style="text-align: center;">CABINET</p> <p style="text-align: center;">15 JANUARY 2018</p>	
<p>ACQUISITION OF AN INTEREST IN LAND FOR PLANNING PURPOSES (STAMFORD BRIDGE GROUNDS, SW6), IN ORDER TO ENGAGE SECTION 203 OF THE HOUSING & PLANNING ACT 2016</p>	
<p>Report of the Cabinet Member for Economic Development & Regeneration – Councillor Andrew Jones</p>	
<p>Open report</p> <p>A separate report on the exempt part of the Cabinet agenda provides exempt information.</p>	
<p>Classification: For decision Key Decision: Yes</p>	
<p>Consultation:</p>	
<p>Wards Affected: Parsons Green & Walham; Fulham Broadway</p>	
<p>Accountable Director: Joanne Rowlands, Lead Director for Regeneration, Planning, and Housing Services</p>	
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1. EXECUTIVE SUMMARY

1.1 Planning permission has been granted for the redevelopment of Stamford Bridge Grounds to construct a modern, state-of-the-art, 60,000 capacity all-seater football stadium (“the **Development**”), for the use of Chelsea Football Club (“the **Club**”).

1.2 The approved Development would deliver significant benefits to Hammersmith and Fulham and to London generally. However, the Development is the subject of rights to light injunctive proceedings in the High Court, brought by the owners of 1 &

2 Stamford Cottages, SW10, which seek to prevent the Development from proceeding. The Club is currently involved in defending these proceedings.

1.3 The Club has been in discussions with the owners of 1-2 Stamford Cottages for some time to acquire their rights to light by agreement, but they have confirmed that it is highly unlikely that a private agreement will be reached. Given the significant level of investment necessary, the Club state that they will not be able to implement the Development or secure any necessary development financing whilst there remains a risk that the existing injunctive proceedings might succeed.

1.4 Accordingly, the Club has written to the Council to request that it exercises its statutory powers to acquire a necessary leasehold interest in the relevant land at Stamford Bridge Grounds (“the **Land**”) for planning purposes under section 227 of the of the Town and Country Planning Act 1990 (“the **1990 Act**”), in order to engage section 203 of the Housing and Planning Act 2016 (“the **2016 Act**”), to facilitate the delivery of the approved Development and the realisation of the associated public benefits.

1.5 Section 203 of the 2016 Act is a legal provision that permits the carrying out of development notwithstanding that it would interfere with an easement, covenant, or other third party right. The party with the benefit of such a right is no longer able to protect its right by injunction, and instead gains a right to statutory compensation. The protection provided by section 203 will apply both to the Council and to any party deriving title to the land from the Council – In this case it is proposed that the relevant Land be leased back and the leases held by the Club, who will carry out the Development.

1.6 This report explains what easements are (especially rights of light); why the Club has requested that the Council intervenes and uses its statutory powers; the legal effect of the operation of Section 203, and why officers consider such an intervention to be necessary and appropriate in this case.

2. RECOMMENDATIONS

It is recommended that Cabinet: -

2.1 Approves the acquisition of a leasehold interest in the relevant Land at Stamford Bridge Grounds referred to in this report (shown on the plan attached at appendix 1) for planning purposes, pursuant to Section 227 of the Town & Country Planning Act 1990.

2.2 Approves the subsequent leaseback and associated property documents in respect of the Land pursuant to section 233(1)(a) of the 1990 Act.

2.3 Resolves that it is the intention of the Council in acquiring a leasehold interest in the relevant Land for planning purposes to engage the provisions of Section 203 of the of the Housing and Planning Act 2016, in order to override easements and

other rights in respect of the Land, and to subsequently leaseback the relevant Land to enable the Club to carry out the Development.

2.4 Resolves that the terms of the acquisition as outlined in recommendations 2.2 and 2.3 above will be primarily based on the heads of terms (“the **Heads of Terms**”) attached at appendix 3 (in the exempt part of the Cabinet agenda), subject to any further revisions that might be agreed ahead of the Cabinet meeting by the Director of Property and Building Management and the Director of Law.

2.5 Resolves to give delegated authority to the Lead Director for Regeneration, Planning and Housing Services, in consultation with the Cabinet Member for Economic Development & Regeneration, and the Director of Law, to agree the approach to be adopted and to delegate to the Director of Property and Building Management and the Director of Law to finalise the Heads of Terms and ensure that the appropriate legal documents are completed.

3. REASONS FOR DECISION

The key reasons for this decision are: -

3.1 Planning permission has been granted for the Development. There are considerable public benefits associated with the Development but it is currently the subject of rights to light injunctive proceedings in the High Court, which seeks to prevent the Development from proceeding.

3.2 There is a compelling case in the public interest for the Council to acquire the Land for planning purposes under section 227 of the 1990 Act, to engage section 203 of the 2016 Act and enable the development to proceed and the public benefits to be realised. The engagement of these powers is considered to be proportionate and justified, notwithstanding the interference with the private rights of the landowners affected by overriding the third-party rights to light over the land.

4. PROPOSAL AND ISSUES

Background and Current Proposals

4.1 On 11th January 2017 the Council’s Planning Applications and Development Control Committee (PADCC) resolved to grant planning permission for the redevelopment of Stamford Bridge Grounds (application Ref.2015/05050/FUL), subject to there being no contrary direction from the Mayor of London and upon the completion of a satisfactory section 106 agreement. The Mayor subsequently confirmed that he was happy for the Council to determine the application and grant planning permission and the section 106 agreement was completed and the planning permission issued on 31st March 2017. The planning application and supporting documents, together with the planning officers’ report to the PADCC, and the consultation responses, are relevant to the current report, and are listed as background papers (published).

4.2 Section 2.0 of the planning report details the publicity and consultations carried out as part of the planning application process, and includes a summary of

the significant number of consultation responses received (both for and against the Development). Appendix 1 to the planning report contains a list of the of the addresses from which the representations were received.

4.3 Paragraph 3.75 of the planning report includes a summary of the sunlight and daylight environmental effects of the proposed stadium on Stamford Cottages, as reported in the planning Environmental Statement. Section 4.14 of the report considers the impact of the development on the amenities of the occupiers of neighbouring properties (including sunlight and daylight impacts on Stamford Cottages) from a planning perspective.

4.4 The approved Development involves the demolition of existing stadium and the construction of a new 60,000 capacity all-seater football stadium with ancillary uses and works including: Club shop, kiosks and museum; restaurant/café; the construction of decking platforms over the District Line railway to the north-west and the Southern mainline railway to the east; external concourse areas; associated excavation works; new pedestrian access from Fulham Broadway Station and Fulham Road; new vehicular access via Wansdown Place; car parking; and landscaping.

4.5 Stamford Bridge has been the home ground of Chelsea Football Club for the last 112 years. It is one of the oldest venues in continuous use in the world. The Club is operated by Chelsea FC plc and functions as a subsidiary of Fordstam Ltd (who submitted the application for planning permission). The Chelsea Pitch Owners own the freehold of the current Stamford Bridge Stadium (the turnstiles, the pitch, and the Club name). A wide range of uses are provided in the stadium on both match and non-match days.

4.6 The new state-of-the-art football stadium would increase the existing capacity by almost 18,400 seats. Unlike the current stadium, which was built up incrementally over different stages of time, the new stadium would consist of a single coherent structure with a distinctive shaped design, and would have the landmark qualities of a significant sporting venue with a clear identity.

4.7 Officers consider that the Development would deliver significant public benefits, as outlined in this report, and as set out at appendix 4. These benefits were previously identified in the planning report to the Council's PADC Committee (e.g. at paragraph 6.12 "Application Heads of Terms," and at paragraph 6.22) and were considered by the Committee prior to their decision to grant planning permission, subject to there being no contrary direction from the Mayor of London. In determining to support the Committee's decision and allow the Council to grant planning permission the Mayor of London also acknowledged these benefits. The Club is keen to press on with the delivery of the scheme, so that the benefits can be realised.

4.8 The Council's decision to grant planning permission was the subject of a legal challenge by way of judicial review. However, on 14th July 2017 the High Court Judge considering the matter refused permission for the challenge to proceed. The judicial review claimants subsequently applied to the Court of Appeal against this

decision, but leave to appeal was refused on 23rd August 2017. Accordingly, the planning permission is now free from challenge and can be implemented.

4.9 The project is now moving from the planning phase into the delivery phase, including assembling all the required land and property interests.

Land and Property Interests for the Development

4.10 The Club has been in discussions with neighbours and land owners, including Network Rail and Transport for London, regarding the acquisition of their property interests for some considerable time and has been able to obtain most of the land and interests needed to deliver the Development.

4.11 To date the Club has acquired 36 out of the 38 long leasehold interests in the residential tower Village Court and negotiations are continuing with the remaining two owners with the expectation that the acquisitions will be agreed. The Club is also in an advanced stage of negotiations with Network Rail and Transport for London to acquire a sufficient interest in their land to deliver the Development, with heads of terms in circulation.

4.12 In addition to the land needed for the Development, the site is subject to certain rights and easements, primarily rights to light. The Club has appointed Anstey Horne & Co, who are experts in the field, to undertake the rights to light analysis and negotiations with those adjoining property owners whose rights to light are affected by the Development.

4.13 Anstey Horne have identified approximately 50 registered owners and occupiers with interests in properties surrounding the Development that will experience light loss to a potentially actionable level because of the Development. The Club has taken active steps to contact these owners and occupiers and is fully committed to agreeing reasonable compensation to secure the release of those rights by agreement. The Club has provided details of the progress of negotiations with the affected parties, which is attached at appendix 8 of this report (in the exempt part of the Cabinet agenda). As at the first week of December 2017 61% of the affected parties have accepted offers for their rights, and some 86% of these have agreed heads of terms. Negotiations are ongoing for many of the remaining properties and the Club is confident that agreements will be reached with these parties also.

4.14 Whilst the Club is fully committed to continuing discussions with all identified parties, at this stage they state that it is considered highly unlikely that agreement will be reached with the owners of 1-2 Stamford Cottages, SW10.

What are “easements” and “third-party rights” and what is a “right to light”?

4.15 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.

4.16 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.

4.17 Any interference with a right of light may be prevented by those affected by seeking an injunction against those who are infringing their right. Often, developers of tall buildings have been able to avoid injunctions by reaching settlement agreements 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 - in this case the owners of 1-2 Stamford Cottages have already applied for an injunction to prevent the Development from proceeding.

Rights to Light – 1-2 Stamford Cottages, SW10

4.18 It is the eastern part of the approved Development (part of the new east stand and part of the decking structure over the railway) that causes light loss to 1-2 Stamford Cottages. A plan showing the location of the property relative to the new stadium is attached to this report at appendix 5. A copy of the (injunction) claim brought by the owners of 1-2 Stamford Cottages is attached at appendix 6 (in the exempt part of the Cabinet agenda). The submitted claim contains a plan showing the (common law) rights to light contours and an Equivalent First Zone (EFZ) table, both prepared by Anstey Horne, which show the impact of the Development on light to 1-2 Stamford Cottages, based on the established Waldram method. It should be noted that the contours plan and the information in the EFZ table have both been agreed between Anstey Horne and Point 2 Surveyors, the respective parties' rights to light surveyors, as being accurate. Officers consider that the light losses demonstrated in the contours and the table contained in the particulars of claim would be sufficient on a traditional Waldram analysis to support a claim for an injunction. Further details of the light loss to 1-2 Stamford Cottages and an explanation of how the traditional Waldram analysis works can be found at appendix 2 of this report (paragraphs A2.11 – A2.15).

4.19 A summary chronology of the negotiations between the Club to the owners of 1-2 Stamford Cottages is attached to this report at appendix 7 (in the exempt part of the Cabinet agenda).

4.20 The planning report to the Council's PADCC includes a summary of the consultation responses to the original planning application relating to sunlight and daylight impacts, and, in particular, in relation to the potential impacts on Stamford Cottages at paragraph 2.2.19 – 2.2.21 (inclusive) and paragraph 2.2.58. Paragraph 3.75 of the report includes a summary of the sunlight and daylight environmental effects of the proposed stadium on Stamford Cottages, as reported in the Environmental Statement. Section 4.14 of the report provides a summary of amenity considerations (including sunlight and daylight impacts) in respect of the potential impact of the proposed stadium on Stamford Cottages (including paragraphs 4.14.6, 4.14.24 – 4.14.34 (inclusive), 4.14.40, 4.14.51, and 4.14.59).

The Council's Statutory Powers

4.21 Powers to override rights over land acquired or appropriated for planning

purposes were previously provided in section 237 of the Town and Country Planning Act 1990 (“the **1990 Act**”). These have more recently been replaced by the provisions of section 203 of the Housing and Planning Act 2016 (“the **2016 Act**”).

4.22 Under Section 203 of the 2016 Act the Council has powers available to it that would allow the Development to proceed, notwithstanding that it would interfere with the rights to light of 1-2 Stamford Cottages, SW10.

4.23 Under Section 204 of the 2016 Act there is a liability to pay compensation for any interference with a relevant right or interest or breach of a restriction that is authorised by Section 203 of the 2016 Act. The compensation is calculated on the same basis as compensation payable under the Compulsory Purchase Act 1965.

4.24 Section 226 of the 1990 Act provides that a local authority (subject to the authorisation of the Secretary of State) has power to acquire compulsorily any land in their area, if they think that this will facilitate the carrying out of development, re-development, or improvement on or in relation to the land; or which they consider is required for a purpose which it is necessary to achieve in the interests of the proper planning of an area.

4.25 Under Section 226(1A) of the 1990 Act, a local authority may not acquire land compulsorily, for the purpose facilitating the carrying out of development, unless they consider that the development is likely to contribute to the achievement of one or more of the following objectives:

- (a) the promotion or improvement of the economic well-being of their area;
- (b) the promotion or improvement of the social well-being of their area;
- (c) the promotion or improvement of the environmental well-being of their area.

4.26 Section 227 of the 1990 Act provides that the Council may acquire by agreement any land which it requires for any purpose for which it may be authorised to acquire land under Section 226 of the 1990 Act.

4.27 Section 246 of the 1990 Act provides, in this case, that reference to the acquisition of land for planning purposes is a reference to the acquisition of it under section 226 or 227 of the 1990 Act.

4.28 Section 233 of the 1990 Act includes obligations for the disposal of land held for planning purposes by the Council. In this case the Council will be relying on section 233(1)(a) of the 1990 Act, which permits the disposal of the land in such a manner and subject to such conditions as appears to the Council expedient to secure the best use of that or other land and any buildings or works which have been or are to be erected, constructed, or carried out (whether by itself or any other person). It is the opinion of officers, for the reasons set out in this report, that the Council’s obligations under section 233(1)(a) can be satisfied. In officers’ view the proposed framework for the disposal of the land is appropriate to secure the carrying out of the development, which, officers consider, is the best use for the land and the site as a whole. Furthermore, in this case officers do not consider that full Secretary

of State consent will be required for the proposed disposal because, in the context of the proposed transaction as a whole and the final terms for disposal (which will be subject to a valuation of the structure of the deal and subject to any necessary refinements or adjustments to the draft heads of terms ahead of the Cabinet meeting), the consideration will be covered by the general consents.

4.29 The Council will need to be satisfied that the terms as a whole are within the powers of the Council. Generally, it should be satisfied that there is a compelling case in the public interest for the Land to be acquired to enable the development to proceed and that the engagement of the powers would be proportionate and justified, notwithstanding the interference with the private rights of the landowners affected.

What is Section 203 of the 2016 Act?

4.30 Section 203 of the 2016 Act applies where the Council acquires or appropriates land for planning purposes so that easements and third-party rights (including rights of light) may be overridden pursuant to those provisions by development of that land (provided it is carried out in accordance with planning permission).

4.31 In short, Section 203 operates to translate 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.

4.32 The protection provided 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, the risk of an affected property owner, tenant or occupier seeking an injunction to prevent the Development going ahead based on the infringement of a right to light (or any other right) will be removed.

4.33 For section 203 of the 2016 Act to come into effect the development must have planning permission, as is the case here, and the Council must hold an appropriate interest in the land. 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. To do so the Council would need to be satisfied that the circumstances set out in Section 226(1A) of the 1990 Act are met – in summary, that acquiring the Land would facilitate the carrying out of Development and that the Development in question would contribute to the economic, social, or environmental well-being of the area.

4.34 It is the opinion of officers that, for the reasons set out in this report, the Land could be acquired compulsorily under Section 226 to facilitate carrying out of the Development, and that such Development would advance all three objectives identified at section 226(1A).

4.35 As, subject to satisfying the relevant requirements, the effect of the acquisition would be to engage the overriding provisions of Section 203 of the 2016 Act it is necessary to consider whether the facilitation of the development would justify an interference with the rights of third parties. In making that decision regard should be had to the advice and guidance contained in the current DCLG Guidance on Compulsory Purchase (October 2015). Fundamentally, the decision to acquire land in order to engage Section 203 should only be made where it is necessary, there is a compelling case in the public interest and the Council should be sure that the purposes for which the powers are being exercised justify interfering with the human rights of those whose human rights would be affected. Particular consideration should be given to the provisions of Article 8 and Article 1 of the First Protocol to the European Convention on Human Rights, and this is considered further in appendix 2 of this report (paragraphs A2.34 – A2.41).

4.36 The explanatory note relating to the 2016 Act it is helpful in indicating the underlying objective of the provisions. Regarding section 203 powers it provides guidance that the requirement [section 203(2)(c)] that the authority ‘could’ acquire the land compulsorily for the purposes of the building work was intended only to require that the authority had the relevant enabling powers, not that on the facts of the case a compulsory purchase order would be confirmed for the compulsory acquisition of the land.

4.37 The proposed disposal of the Land acquired by the Council for planning purposes will also need to ensure that the requirements of section 233(1)(a) of the 1990 Act are met. Section 233(1)(a) authorises such disposal (at the best consideration that can reasonably be obtained) providing that the Council is satisfied that the disposal is expedient to secure the best use of the land. For the reasons set out in paragraph 4.28 above officers consider that the Council’s obligations under section 233(1)(a) can be satisfied in this case.

Use of Section 203 – Considerations

4.38 The effect of Section 203 is to allow beneficial regeneration to take place without the risk of injunction being granted to prevent the development from being carried out. However, it is recognised that this can involve the interference with human rights – in particular, the right to peaceful enjoyment of possession and the right to respect for private and family life and home.

4.39 Considering this, Officers have looked at best practice and the approach adopted by the London Borough of Haringey in their consideration of rights to light issues relating to the Tottenham Hotspur Stadium development. Haringey developed 6 key areas of consideration (themselves adapted from the City of London Corporation) to help determine whether the use of statutory powers to override easements and rights in that case was appropriate, reasonable, and necessary. These considerations are set out below, and a detailed assessment of the proposals against these considerations is attached at appendix 2 of this report.

Consideration 1: The use of statutory powers is required in that:

(i) The infringements cannot reasonably be avoided;

(ii) The easements to be interfered with cannot reasonably be released by agreement with affected owners;

(iii) The development is prejudiced due to the risk of injunction and adequate attempts have been made to remove the injunction risks.

Consideration 2: The use of statutory powers will facilitate the carrying out of the Development;

Consideration 3: The Development will contribute to the promotion and improvement of the economic, social, or environmental well-being of the area and therefore be in the public interest;

Consideration 4: The benefits of the Development could not be achieved without giving rise to the infringements of the identified rights ;

Consideration 5: Is it in the public interest that the development is carried out?

Consideration 6: Is the public interest to be achieved proportionate to the private rights being infringed by the action of Section 203?

Proposed Acquisition and Leaseback Arrangements

4.40 Should the Cabinet agree to the proposed acquisition of a leasehold interest in the relevant Land for planning purposes, and the subsequent leaseback of this Land, the terms of the acquisition and leaseback shall (subject to the terms of the delegation in the recommendation at paragraph 2.5) be primarily based on the Heads of Terms attached at appendix 3 of this report (in the exempt part of the Cabinet agenda). These are still subject to negotiation and some variation of the structure and will be reported at the Cabinet meeting.

4.41 It will be necessary for the Council to take an appropriate land interests from Network Rail (NR) and the Club in relation to that part of the Development that causes light loss to 1-2 Stamford Cottages, SW10, under Section 227 of the 1990 Act, to engage the provisions of Section 203 of the 2016 Act and override the existing rights to light.

4.42 This will involve the acquisition of long leasehold interests of portions of airspace over land owned by the Club and by NR, representing a small part of the Development, as identified on the plan attached to this report at appendix 1. Following the grant of these leases to the Council, subleases would be granted to the Club and NR. The leases held by the Council would subsequently be transferred to the Club.

4.43 The Club is in negotiations with Network Rail regarding the acquisition of its land interests. Draft heads of terms are in circulation and it is anticipated that heads of terms will be agreed in the next few weeks.

4.44 As part of the transaction the Club will enter a deed of indemnity with LBHF, to provide the Council with full indemnity and ensure that it would be covered for any

liabilities and costs that might arise because of the proposed acquisition and disposal of the leasehold interests and the operation of Section 203 powers.

4.45 As pointed out above, section 233(1)(a) of the 1990 Act states that the Council may dispose of the Land in such a manner and subject to such conditions as appears to it expedient to secure the best use of that or other land and any buildings or works which have been or are to be erected, constructed, or carried out (whether by itself or any other person).

4.46 The appropriate approach is for the Council to determine whether the overall basis for the disposal of the Land appears to it expedient to secure the best use of the land and the associated site. The Council should then consider whether, in the context of those proposed terms, the consideration is not less than the best that can reasonably be obtained for the transfer back of the relevant interests in the land. The Council has appointed consultants to provide valuation advice on the best consideration that can reasonably be obtained.

4.47 Having regard to the professional advice received, officers consider that the proposed framework for the disposal of the Land is appropriate to secure the carrying out of the development, which, officers consider, is the best use for the land and the site as a whole. It is anticipated that full Secretary of State consent will not be required for the proposed disposal because the consideration for the disposal, in the context of the proposed transaction, will be covered by the general consents.

5. OPTIONS AND ANALYSIS OF OPTIONS

Alternative options considered

5.1 Officers consider that the likely implication of not exercising the Council's statutory powers to acquire the relevant land for planning purposes, to engage section 203 of the 2016 Act, is that the Development would not proceed as proposed and the public benefits would be lost.

5.2 Often, developers have been able to avoid injunctions by reaching agreements with affected neighbours for the release of their rights of light upon the payment of compensation, and in this case, as the Club has explained and is shown in appendix 8 (in the exempt part of the Cabinet agenda), the Club has been able to reach agreement with most of the relevant right holders, and expects to reach agreement with the remainder shortly.

5.3 The courts have used their discretion to award damages instead of an injunction where:

- The interference was small;
- It could be estimated in money;
- It could be adequately compensated by a small payment; and
- An injunction would be oppressive.

5.4 A 2010 case relating to a development in Leeds, re-affirmed however that an injunction remains the primary remedy for any party whose rights of light will be infringed by a proposed development.

5.5 In practice the effect of this court decision is that it has become more difficult to reach negotiated agreements with affected owners of rights to light. In turn, this has made it more difficult for developers to secure development finance.

5.6 There have been further developments in case law since 2010, most notably with a Supreme Court decision in 2014. In *Lawrence v Fen Tigers Limited* the court agreed that the starting point was that an injunction should be granted. However, it disapproved the application of the conditions for awarding damages in place of an injunction that had previously been adopted. Rather the judge should exercise his discretion in all the circumstances of the case as to whether it would be just to depart from the normal remedy of an injunction. The court made clear that the public interest was one of the material circumstances to which regard should be had in exercising that discretion. The court also indicated that, while the grant of planning permission is not to be regarded as raising a presumption against an injunction, it may provide strong support for the contention that the activity would be of benefit to the public, which could be relevant to the question whether to grant an injunction.

5.7 On the facts of the present case, notwithstanding the public interest in the development being carried out, there remains significant uncertainty as to whether an injunction would be granted rather than damages. As the Club has explained and officers accept, as funders require all injunctable rights to light to have been released before they will provide funding, the Development will not be funded unless the risk of a successful injunction is removed. Further consideration of these matters is attached to this report at appendix 2.

5.8 Accordingly, officers consider that removing the risk of injunction and the consequential detrimental impact on funding required to deliver the Development, and the public benefits associated with it, is the only realistic option.

6. CONSULTATION

Engagement and negotiation

6.1 The planning application for the Development was the subject of extensive public consultation prior to the decision being taken to grant planning permission. Section 2 of the planning report (available as a background document) provides a detailed account of the consultation activities undertaken by both the Club and the Council, and a comprehensive summary of the various representations received in response, both for and against the proposals. Appendix 1 of the planning report provides a tabulated list of consultees addresses and consultee response dates in respect of the first and second round consultation exercises.

6.2 The letter from Eversheds Sutherland to the Council of 15 September 2017, which is attached at appendix 9 of this report, also highlights the extensive public consultation/engagement and states that “pre-application consultation commenced in May 2014 with initial consultation by the Club with key stakeholders and local groups. Further consultation was undertaken in 2015, and two public exhibitions were held which were each attended by over 1,500 people. The Council held an initial public consultation between December 2015 and January 2016 and (following

an amendment in scheme design) a second public consultation between September 2016 and October 2016. Over 13,000 responses were received in response to the Council's consultations, of which 97.5% were in support of the Development".

6.3 The Club has actively sought to identify and acquire the relevant third-party land and property interests to allow the approved Development to proceed, and the public benefits to be realised. Within this context there have been extensive discussions between the Club and the owners of 1-2 Stamford Cottages for the rights affected. The Club are seeking to acquire the necessary rights to light identified by the respective consultants by agreement. Those negotiations are on commercial terms and conducted openly in the light of the availability of statutory powers, should it not be possible to acquire rights by agreement.

6.4 Whilst the consultation undertaken by the Council to date may not have been specifically directed towards the proposed land acquisition, further public consultation it is not considered necessary in this case to enable the Council to form the view, for the reasons set out in this report, that the proposed acquisition and transaction as a whole would be in the public interest. There has been direct engagement with the particular right holders in respect of the release of the rights including the alternative of acquisition by the Council to engage the provisions of section 203 of the 2016 Act.

6.5 It is clear from the reasons given for the grant of planning permission, and in the planning report to the Council's PADC Committee, that the development would meet the planning requirements under the 1990 Act. The impact of the Development on amenity, and in particular on daylight, is assessed from a planning point of view in the Committee report, concluding that given the nature of the location the overall effects would be acceptable.

6.6 Appendix 8 of this report (in the exempt part of the Cabinet agenda) details the level of engagement and negotiation that the Club have undertaken with affected parties to secure the release of rights to light by agreement, and a summary chronology of the specific discussions between the Club and the owners of 1-2 Stamford Cottages, SW10, is at appendix 7 (in the exempt part of the Cabinet agenda).

6.7 In June 2017 the Club offered the owners of 1-2 Stamford Cottages a premium more than the market rate for the release of their rights to enable the Development to proceed. This has not been accepted. The Club have explained that, in their view, there is no realistic possibility of the rights being obtained by private treaty. Officers accept that this is the position and that these negotiations have been carried out by the Club in good faith on a commercial basis in a genuine attempt to secure the necessary rights to carry out the development privately.

6.8 More particularly, officers have considered the evidence provided by the Club of the negotiations that have been ongoing for a lengthy period between the Club and the owners of 1-2 Stamford Cottages. Officers consider that the Club have been more than reasonable in their efforts to reach agreement with the owners. It is also clear that at present there is no prospect of a private treaty settlement being reached between the Club and the owners of 1-2 Stamford Cottages on reasonable terms.

6.9 As such, and for the reasons set out in this report, officers consider that the interference with the rights to light of 1-2 Stamford Cottages would be justified and proportionate, having regard to the case in support of acquisition as a whole and all material circumstances and on the evidence, including the evidence as to the implications for the delivery of the Development.

6.10 The Council has received a letter from solicitors acting for the owners of 1-2 Stamford Cottages, SW10, a copy which is attached to this report at appendix 11.

6.11 The letter states that their clients will “take all legal action available to them”, if the Council decide to acquire an interest in the land for planning purposes under section 227 of the 1990 Act “and/or if rights under section 203 of the Housing and Planning Act are relied upon, including, if relevant, their right to issue proceedings to review any decision or action” taken by the Council.

6.12 In paragraph 3.7(a) the letter confirms that the area of the new stadium that will cause the interference to rights of light at 1-2 Stamford Cottages is an area of new east stand, which, it is stated, “could be cut-back or the stadium re-designed so as not to cause the interference.” The letter goes on to submit that “a substantial stadium could be constructed on the development site that does not interfere with our clients’ rights of light”. For the reasons set out in this report officers do not agree that this is the case. Officers do not consider that the interference to the rights of light at 1-2 Stamford Cottages can reasonably be avoided, or that the benefits of the Development would be likely to be achieved without giving rise to the infringements of the identified rights. These matters are addressed further in appendix 2 of this report.

6.13 Paragraphs A.2. – A2.6 of appendix 2 explain why officers consider that the loss of light to 1-2 Stamford Cottages cannot reasonably be avoided. It is considered that the Development would not proceed and that the associated public benefits would not be achieved without giving rise to the infringements for which Section 203 is being engaged. Given the physical constraints of the site officers consider that it would not be possible to amend the approved Development in a way that would remove or meaningfully mitigate the impacts on 1-2 Stamford Cottages without the development becoming undeliverable in planning, design, and commercial terms as a consequence.

6.14 Officers have reviewed the information and explanations provided by the Club, with due regard to the letter sent by Eversheds on 15 September (appendix 9) and to chapter 5.2 and 5.3 of the Design and Access Statement submitted with the planning application for the development. Officers have also met with representatives of the Club to discuss the impacts of modifying the scheme to a development that would not remove or meaningfully reduce the loss of light at 1-2 Stamford Cottages, and consider that the Club would be unlikely to proceed with such a compromised design. In these circumstances, there is considered to be a very real risk that the stadium would not be redeveloped and the public benefits associated with the scheme would be lost.

6.15 Paragraphs 3.7(b) and 3.7(c) of the letter from solicitors acting for the owners of 1-2 Stamford Cottages raise objections to the “disproportionate amount” of hospitality seating and the overall provision of general admittance seats. The Club has confirmed that the figures quoted for hospitality seating in the letter are incorrect. Whilst they acknowledge that the final amount of hospitality seating is yet to be confirmed, they state that the projected number is approximately 11,000. This would be in line with most other stadia as a proportion of overall seating. Furthermore, the removal of hospitality seating would not, as may be inferred from the letter, result in a significant increase in general admission seating and would not have a positive impact on the financial return from the development that would enable any cutback or alternative design to be accommodated.

6.16 The remainder of the letter focuses primarily on the requirements of section 227 of the 1990 Act, and section 203 of the 2016 Act. These requirements, together with other related requirements and material considerations, have been identified and addressed in the body of this report - including the effects of engaging section 203 of the 2016 Act.

6.17 The proposed acquisition by the Council of an interest in the relevant land for planning purposes is considered to accord with the statutory requirements. There is considered to be a compelling case in the public interest for engaging section 203 to deliver the development in this case, and this is considered to justify the consequent interference with the relevant rights, and to be proportionate

7. EQUALITY IMPLICATIONS

7.1 In deciding to proceed with the acquisition of the relevant land for planning purposes the Council must pay due regard to its Public-Sector Equality Duty (PSED), as set out in section 149 of the Equality Act 2010 (the “**2010 Act**”). The PSED provides (as far as is relevant) as follows:

(1) A public authority must, in the exercise of its functions, have due regard to the need to:

- eliminate discrimination, harassment, victimisation, and any other conduct that is prohibited by or under this Act;
- advance equality of opportunity between persons who share a relevant protected characteristic and persons who do not share it;
- foster good relations between persons who share a relevant protected characteristic and persons who do not share it.

(2) Having due regard to the need to advance equality of opportunity between persons who share a relevant protected characteristic and persons who do not share it involves having due regard to the need to:

- remove or minimise disadvantages suffered by persons who share a relevant protected characteristic that are connected to that characteristic;

- take steps to meet the needs of persons who share a relevant protected characteristic that are different from the needs of persons who do not share it;
- encourage persons who share a relevant protected characteristic to participate in public life or in any other activity in which participation by such persons is disproportionately low.

7.2 Case law has established the following principles relevant to compliance with the PSED which Council will need to consider:

7.3 Compliance with the general equality duties is a matter of substance not form.

7.4 The duty to have "due regard" to the various identified "needs" in the relevant sections does not impose a duty to achieve results. It is a duty to have "due regard" to the "need" to achieve the identified goals.

7.5 Due regard is regard that is appropriate in all the circumstances, including the importance of the area of life of people affected by the decision and such countervailing factors as are relevant to the function that the decision maker is performing.

7.6 The weight to be given to the countervailing factors is in principle a matter for the authority. However, in the event of a legal challenge it is for the court to determine whether an authority has given "due regard" to the "needs" listed in Section 149 of the 2010 Act. This will include the court assessing for itself whether, in the circumstances, the local authority has given appropriate weight to those "needs" and not simply deciding whether the authority's decision is a rational or reasonable one.

7.7 The duty to have "due regard" to disability equality is particularly important where the decision will have a direct impact on disabled people. The same applies for other protected groups where a decision could directly affect them.

7.8 The PSED does not impose a duty on public authorities to carry out a formal equalities impact assessment in all cases when carrying out their functions, but where a significant part of the lives of any protected group will be directly affected by a decision, a formal equalities impact assessment (EQUIA) is likely to be required by the courts as part of the duty to have 'due regard'. In this case an EQUIA was carried out on the proposed Development as part of the planning process. It was included in the report to the Council's PADC Committee, and it was properly considered by the Committee prior to the decision being taken to grant planning permission. A copy of this EQUIA is attached at appendix 10 of this report.

7.9 The Committee report summarised the positive and negative impacts which have been identified in the analysis and the proposed mitigation measures by way of conditions and planning obligations. The EQUIA needs to be considered in reaching a decision on the recommendations in the current report.

7.10 The duty to have "due regard" will normally involve considering whether taking the decision would itself be compatible with the equality duty i.e. whether it will

eliminate discrimination, promote equality of opportunity, and foster good relations. Consideration must also be given to whether, if the decision is made to go ahead, it will be possible to mitigate any adverse impact on any protected group, or to take steps to promote equality of opportunity by, for example, treating an affected group more favourably

7.11 The analysis of equality impacts of the planning application on protected groups as defined by the Act shows that:

1. There are positive impacts on age, disability, pregnancy and maternity, sex, race, religion, and belief including non-belief and children in relation to the applicant's proposals to provide additional stadium capacity, more accessible spectator facilities, a redistribution of employment and a safer and more controlled environment in the stadium grounds (resulting from the access and egress improvements). There will also be positive impacts in relation to the additional facilities for disabled/wheelchair bound spectators. The comprehensive package of s106 obligations will provide mitigation measures which would result in the provision of new community uses and services which ameliorates the loss of existing on-site facilities.
2. There will be negative impacts on age, disability, pregnancy and maternity, and children given the loss of housing, hotels, and community/leisure facilities. Some of the negative impacts from the loss of housing, would be off-set in the longer term through the re-provision of housing (to be constructed off-site) secured in the s106 agreement resulting in a neutral impact. Those with the protected characteristics of race, religion belief (including non-belief) will also be negatively impacted from the loss of housing.
3. The loss of the employment created by the hotels, leisure facilities and community floorspace is likely to have a negative impact on age. This could be off-set from additional employment provisions associated with the larger stadium and the additional conference facilities.
4. The impacts of construction are expected to have varying degrees of negative impacts on age, disability, pregnancy and maternity and children, depending on the mitigation measures that are set out in the Construction Management Plan.
5. The provision of a new sports stadium for a high-profile, London-based football club as a cultural facility is considered to have beneficial impacts on age, disability, race, religion, and sex.

7.12 Generally, it is considered that the impacts of the development proposals are positive, offering enhanced stadium facilities for increased spectator attendance. The proposals comprise significant improvements to the access and egress arrangements (on match and non-match days), ensuring spectators can be marshalled in a safe and controlled manner to/from public transport and the town centre. The proposals would provide improved facilities for all spectators, including those with protected characteristics of age, disability, pregnancy, maternity, and children.

7.13 Negative impacts (without any mitigation) are identified in relation to the proposed loss of community facilities and leisure (age, disability, maternity and pregnancy, race and religion/belief (including non-belief), the loss of the employment generated by the hotels/leisure facilities (age, disability, maternity and pregnancy and sex), the impacts of construction (age, disability and pregnancy and maternity) and loss of housing (age, disability, religion, sex, maternity, pregnancy and children).

7.14 However, the Council considers that the conditions attached to the planning permission and the Section 106 legal agreement will combine to help minimise any negative impacts resulting from the Development; though they will not fully eliminate them due to the scale of the redevelopment and the impacts on some protected groups as identified in the EQUIA. The measures that will be employed are set out in Section 02 of the EQUIA and were also in the body of the Committee report. It should be noted that the mitigation measures proposed and approved as part of the planning permission are not intended to give favourable treatment to any particularly affected group (as required by the PSED) as officers consider that they are necessary to make the development acceptable in planning terms and will apply to all affected people visiting/working at the site and future users/guests/workers.

7.15 Implications verified by Fawad Bhatti, Policy & Strategy Officer, 0208 753 3437.

8. LEGAL IMPLICATIONS

8.1 The legal powers available to the Council to acquire the relevant Land for planning purposes, in order to engage the provisions of Section 203 of the 2016 Act and override third party rights, and the powers to subsequently dispose of the relevant land, are identified and explained in paragraphs 4.21 – 4.29 of this report.

8.2 Prior to implementation of the land transaction the Council will obtain an indemnity from the Developer in respect of any liabilities and costs arising both from the carrying out of the land transaction and any Judicial Review of the Council's actions. The Council has taken Counsels advice to mitigate as far as possible the risk of any challenge.

8.3 Implications completed by Dermot Rayner, Senior Solicitor, 0208 753 2715]

9. FINANCIAL IMPLICATIONS

9.1 In exercising its statutory powers to acquire a necessary leasehold interest in the Land at Stamford Bridge Grounds, the Council will incur costs. These are unquantified at this stage.

9.2 Chelsea Football Club are due to enter deeds of indemnity with the Council, as set out in paragraph 8.2 above. This should provide the Council with full indemnity and ensure cover in respect of any costs and liabilities arising from the proposed acquisition and disposal of the leasehold interests, including any Stamp Duty Land Tax liability, and the use of statutory powers to enable the transaction. Care should be taken to ensure it is correctly drafted to cover all costs and liabilities that will or might arise as no budgets are held to cover these costs.

9.3 Section 233 of the 1990 Act requires that the Council obtain the best consideration which can reasonably be obtained, in the context of the overall transaction.

9.4 Implications completed by Daniel Rochford, Head of Finance, 020 8753 4023.

10. IMPLICATIONS FOR BUSINESS

10.1. The Development will bring an agreed package of economic and social benefits, including creating local employment, skills, and local SME supply chain opportunities.

10.2. Any delays with the Development will also delay the realisation of the agreed section 106 economic and social benefits package.

10.3 Implications completed by Albena Karameros, Economic Development Team, 020 7938 8583.

11. COMMERCIAL IMPLICATIONS

11.1 There are no procurement related issues contained in this report as it relates to a property transaction and this is outside the scope of both the Public Contracts Regulations 2015 (as amended) and the Council's Contracts Standing Orders.

11.2 Implications completed by Alan Parry, Procurement Consultant, 020 8753 2581

12. OTHER IMPLICATION PARAGRAPHS

12.1 Nothing further to add on risk management, the report covers these aspects adequately.

12.2 Implications verified by Michael Sloniowsky, Principal Consultant (Risk Management), 020 8753 2587.

12.3 No information or technology implications.

12.4 Implications verified by Ciara Shimidzu, Head of Information and Strategy (IT), 020 8753 3895.

13. BACKGROUND PAPERS USED IN PREPARING THIS REPORT

No.	Description of Background Papers	Name and contact details of responsible officer	Department/ Location
	Planning application Ref. 2015/05050/FUL (Stamford Bridge Grounds, SW6) and supporting documentation.	Ieuan Bellis, 020 8753 3474, ieuan.bellis@lbhf.gov.uk	RPS

	<p>(Published)</p> <p>Officers' report to the Council's Planning Applications & Development Control Committee (PADCC) on 11 January 2017 (as revised) – planning application Ref.2015/05050/FUL (Published)</p> <p>Copies of correspondence between Fordstam and the owners of 1-2 Stamford Cottages (and their respective legal advisors). (Exempt - not for publication)</p>		
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LIST OF APPENDICES

- Appendix 1:** Plan showing the extent of air rights being acquired.
- Appendix 2:** Use of section 203 powers – Assessment of considerations
- Appendix 3:** Land acquisition/disposal Draft Heads of Terms *(Set out in the exempt part of the Cabinet agenda – Not for publication)*
- Appendix 4:** Statement of public benefits provided by the Club.
- Appendix 5:** Plan showing 1-2 Stamford Cottages, SW10, relative to the approved stadium.
- Appendix 6:** Copy of Statement of Claim, including information showing the impact of the stadium Development on light to 1-2 Stamford Cottages, SW10. *(Set out in the exempt part of the Cabinet agenda – Not for publication)*
- Appendix 7:** Summary chronology of discussions between the Club and the owners of 1-2 Stamford Cottages, SW10. *(Set out in the exempt part of the Cabinet agenda – Not for publication)*
- Appendix 8:** Progress of the Club's negotiations with affected parties to secure the release of rights to light by agreement. *(Set out in the exempt part of the Cabinet agenda – Not for publication)*
- Appendix 9:** Letter from Eversheds to the Council dated 15 September 2017
- Appendix 10:** Copy of the EQUIA prepared by the Council as part of the assessment of the Development, prior to granting planning permission.
- Appendix 11:** Letter from Pinsent Mason to the Council dated 6 July 2017