

LONDON BOROUGH OF CAMDEN	WARDS: Frognal, South Hampstead and West Hampstead
REPORT TITLE Consideration of the Request to the Council to use Statutory Planning Powers to Facilitate Delivery of the O2 Masterplan Planning Permission (SC/2025/12)	
REPORT OF Cabinet Member for Planning and a Sustainable Camden	
FOR SUBMISSION TO Cabinet	DATE 4 th June 2025
STRATEGIC CONTEXT <p>We Make Camden is our joint vision for the borough, developed in partnership with our community. This report seeks authority to allow the Council to consider the use of its planning powers to enable the O2 masterplan to proceed. The proposals outlined in this report will contribute to a number of its ambitions including:</p> <ul style="list-style-type: none"> • Everyone in Camden should have a place they call home; • Camden should be a green, clean, vibrant, accessible, and sustainable place with everyone empowered to contribute to tackling the climate emergency; • Camden communities support good health, wellbeing and connection for everyone so that they can start well, live well, and age well; • Camden's local economy should be strong, sustainable, and inclusive – everyone should have a secure livelihood to support them to live a prosperous life; and • Camden actively tackles injustice and inequality, creating safe, strong and open communities where everyone can contribute. <p>Identified challenges include providing enough decent, warm and family friendly housing; making everyone safe in their homes and communities and reducing social isolation; and tackling the climate emergency. Camden's Local Plan (2017), emerging new Local Plan and West End to Finchley Road Supplementary Planning Document provide the policies and guidance that contribute towards addressing the borough's need for homes, jobs and infrastructure and ensure that development is delivered in a way that is socially and economically inclusive, delivers its climate and biodiversity strategies and brings benefits to Camden and its residents.</p> <p>With housing delivery a key Camden and Government priority, the O2 site is the largest site in Camden with planning permission (with permission for up to 1800 homes of which 35% will be affordable). This very significant quantity of new homes and affordable housing due to be delivered alongside public open space, community facilities, retail and commercial uses and a £10m contribution to the improvement of West Hampstead Underground Station will significantly contribute towards meeting Camden's needs and We Make Camden objectives.</p>	

SUMMARY OF REPORT

This report considers a request to the Council from Landsec to consider using its planning powers under Section 203 of the Housing and Planning Act 2016 to facilitate the delivery of the comprehensive O2 Masterplan scheme (ref:2022/0528/P). Granted planning permission subject to a s106 agreement in December 2023, it secures significant public benefits including the provision of 35% affordable housing.

This would involve Camden acquiring an interest in the relevant land in the O2 masterplan site for planning purposes under section 227 of the Town and Country Planning Act 1990 ("TCPA 1990") which would in turn engage S203 of the Housing and Planning Act 2016. If used, these powers would override third party rights including the rights of access enjoyed by the car showrooms to the service road along the north of the site which sits in Landsec's ownership and falls with Phase 1 and 3 of the approved scheme and allow the O2 masterplan to be delivered and enable the significant public benefits to be realised.

The report seeks "in principle" approval to the use of the powers because the Council's Constitution sets out the Cabinet's role in having oversight of land and property resources. The Cabinet also has overall responsibility for acquisitions and disposal of interests in land and to agree acquisitions of property (both freehold and leasehold). The use of these powers would involve acquisition of land (if only for a relatively temporary period) in order for the powers to take effect.

The report outlines the reasons behind the request to the Council to intervene and considers the implications of the operation of these powers and also explains why the public interest and benefits of the scheme support this intervention and why the use of these powers is necessary and justified to enable the scheme to be implemented and brought forward.

As an "in principle" decision it is reliant on specified conditions being met. It also seeks authority to take any subsequent detailed decisions in line with the Constitution and scheme of delegation, where acquisitions agreed in principle by Cabinet and approval of the disposal of any freehold or leasehold land and/or property are delegated to the Director of Development.

Local Government Act 1972 – Access to Information

No documents that require listing were used in the preparation of this report.

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RECOMMENDATIONS

That having due regard to the obligations set out in s149 of the Equality Act 2010 Cabinet is asked to:

1. Consider the request from LS Finchley Road Limited (Landsec) to enter into a land transaction to acquire and subsequently dispose of land in order to

engage the statutory powers conferred by Section 203 of the Housing and Planning Act 2016 ("S203 powers") as set out in Sections 1 and 2 of this report in respect of land comprising the O2 Centre, former Homebase site, service road (Blackburn Road) and car park at Finchley Road NW3("the Land").

2. Agree that the Council would be prepared to enter into a transaction to acquire an interest in the Land from Landsec under section 227 of the TCPA 1990 and subsequently dispose of that interest back to Landsec in order to engage S203 powers for the planning purpose of facilitating the carrying out of the development or for related purposes subject to the following conditions being met:
 - (a) further evidence of the attempts made by Landsec to remove injunction risks through negotiation of the release of relevant rights and interests by agreement (on reasonable terms and within a reasonable timeframe);
 - (b) a suitable deed of indemnity being in place to indemnify the Council; and
 - (c) suitable terms for the acquisition and disposal of an interest in the Land being agreed between the Council and Landsec and subject to appropriate mechanisms being in place to secure the delivery of the approved public benefits including 35% affordable housing.
3. Delegate authority to the Director of Development following consultation with the Cabinet Member for Planning and Sustainability and Director of Economy, Regeneration and Investment, Director of Finance and Borough Solicitor to decide whether the conditions in Recommendation 2 above have been satisfied and if so take all steps required to progress this decision to include where necessary and justified:
 - Any further decision(s) in relation to the exercise of the Council's powers for the acquisition and subsequent disposal of the land interests reasonably required to implement this decision
 - Enter into the legal and property agreements required to put decisions and use of relevant powers into effect
 - Any other related decisions ancillary to and required to facilitate the above recommendations

Signed: 

David Burns, Director of Economy, Regeneration and Investment

Date: 20/05/2025

1. CONTEXT AND BACKGROUND

- 1.1. The O2 centre site in West Hampstead is very much a development of its time with a dated shopping centre and substantial expanse of surface car parking creating a low density and inefficient use of land. Along with the adjacent car showrooms on Blackburn Road it was designed for the car and presents a poor public facing environment, particularly for pedestrians and cyclists and despite its accessible location sitting between two town centres and five railway stations.
- 1.2. Maximising the development potential of underutilised land for a mix of uses, in particular housing, through a comprehensive approach, is strongly supported by a planning policy framework. This includes the National Planning Policy Framework, London Plan, Camden Local Plan, Fortune Green and West Hampstead Neighbourhood Plan, West End Lane to Finchley Road Supplementary Planning Document (SPD) and, whilst of less weight, an emerging new Camden Local Plan.
- 1.3. Following a Planning Committee decision in March 2023 and referral to the Mayor of London, a hybrid detailed and outline planning permission (ref:2022/0528/P) was granted to Landsec subject to a s106 agreement in December 2023 to develop land at The O2 Masterplan Site, Finchley Road, London NW3 6LU ("the Site" shown on the plan attached as Appendix 1) for a 3-phase residential-led mixed use redevelopment with up to 1800 homes.
- 1.4. The detailed phase 1 would deliver 608 homes, of which 192 would be affordable (with c.35% being affordable across the whole scheme). The comprehensive O2 Masterplan would also provide a number of new green and public spaces, a health centre, community space, retail and commercial re-provision including a cinema and sport/leisure facilities, business space, a green pedestrian and cycling link and a £10m contribution to the improvement of West Hampstead Underground Station.
- 1.5. Whilst the land in Phases 1 and 3 is owned by Landsec as shown in Appendix 2 (and registered under Title numbers NGL806475, NGL988477 and NGL771477), the approved scheme site also includes land not in Landsec's ownership including two car showrooms and Builders Depot sites to the west on Blackburn Road (other ownerships are shown on the plan attached as Appendix 3). Whilst the request to engage S203 powers does not extend to this land it does relate to rights of access held by the showrooms over the section of the Blackburn Road service road which runs along the north side of the Phases 1 and 3 land onto Finchley Road.
- 1.6. The very significant quantity of new homes and affordable housing due to be delivered through the ambitious and comprehensive masterplan with a range of other important public benefits would significantly contribute towards meeting Camden's needs and We Make Camden objectives.
- 1.7. The Planning Committee report [Item 81 Report - The O2 Masterplan Site.pdf](#) in welcoming the proposals stated, *"The comprehensive redevelopment of the whole O2 Masterplan site is necessary to achieve all the planning policy*

strategic objectives, especially in terms of design, transport, land use and permeability.” In conclusion the report stated:

“33.1 The current application would allow for the comprehensive redevelopment of this under-developed land and support the provision of new housing in the borough to meet identified need. The application has a strong vision for the site, to create a new residential neighbourhood with secondary uses, which will support the two neighbouring town centres. At the heart of the scheme is the desire to create a green environment, not dominated by cars where people can walk and cycle. This vision is supported by officers and meets the strategic objectives set out in national, regional and local policy and guidance for this site.

33.2 Comprehensive redevelopment of the whole O2 Masterplan site is a key aspiration of the Council as it the only way to optimise the development potential of this site and achieve all the planning policy strategic objectives, especially in terms of delivering an east/west route, significant open space, replacement bus infrastructure, and transport improvements.”

- 1.8. The adopted West End Lane to Finchley Road SPD and planning committee report also refer to the potential for the Council, in appropriate circumstances, to consider the use of statutory powers, such as compulsory purchase and the over-riding of easements and other rights, where these may be necessary to deliver publicly beneficial development.
- 1.9. This report considers the request by Landsec (originally submitted in April 2024 and subsequently revised in February 2025), the main owner and the developer of the land, for the Council to consider acquiring the Land in order to engage the statutory override provisions in Section 203 of the Housing and Planning Act 2016(S203) in relation to the land making up Phases 1 and 3 of the scheme in order to help facilitate redevelopment. The original request also asked the Council to consider the use of its compulsory purchase (CPO) powers, however this was deferred to allow for Landsec to continue discussions with the relevant landowners.
- 1.10. The report considers the updated request and outlines the statutory framework and reasons and why officers consider there is a sufficient public interest case to justify the Council agreeing to the principle to engage S203 powers to override third party rights to enable the development of the O2 masterplan. This would remove the ability of property owners to prevent or inhibit the carrying out of an approved development scheme through making an application for an injunction or otherwise taking action to prevent interference with their property rights.
- 1.11. Landsec’s original request included details of their attempts to negotiate revised lease terms with Sainsbury’s and other O2 Centre commercial tenants to reduce levels of parking and enable the required section of the car park to be closed off to be able to commence Phase 1. The potential need to seek S203 powers to override those specific rights was identified, but has since been resolved through negotiated agreement between those parties and Landsec to amend those rights. This has enabled commencement of Phase 1 preparatory works including the demolition of the former Homebase store.

- 1.12. Planning permission has also been granted for a temporary sub-station (2024/2863/P) and for the redesign of the car park from over 500 spaces down to 200 and to create an interim bus turnaround(2024/3534/P) to enable preparatory utilities and site work to take place so that Phase 1 construction can be implemented. Before this, a planning application to revise Phase 1 of the approved scheme has also been submitted (ref:2025/0484/P) which awaits determination and proposes additional homes, including further affordable homes to those already approved within that phase.
- 1.13. Separate to the already renegotiated rights over the car park, the car showrooms have rights of access to the service road sitting in Landsec's ownership and falls within Phases 1 and 3 of the approved scheme. Landsec have supplied property title information which indicates they have rights to carry out some works to the road and they have attempted to negotiate amendments to those rights to ensure they can be carried out without the risk of delay or injunction. This is to ensure temporary diversion works to carry out preparatory utilities work and also more permanent changes to the road in order to build out Phase 1 can be carried out without legal action to halt those works. Landsec have signified a commitment to maintain pedestrian and vehicular access to the car showrooms through the provision of alternative arrangements where needed.
- 1.14. Landsec have submitted evidence of engagement with the four interested parties (Chamoss, VW, Spire and Tanner) who respectively own, lease and sub-lease the car showrooms and have sought to seek agreement to amend the rights for more than a year without success to date and which would be needed to enable Phase 1 to be built. This is the primary and most immediate priority for Landsec's request to the Council to consider acquiring the Land in order to engage S203 to override these rights, however this has the result of overriding of other rights, which are primarily the rights to light held by properties surrounding the site.
- 1.15. However, as explained further in section 2, the effect of using these powers is to confer statutory authority to carry out building works even if those works would interfere with other easements and property rights including rights to light (but excluding statutory undertaker rights). To address potential rights to light implications, Landsec initiated engagement with the owners of potentially affected properties (including the Council) in March to assess whether any actionable interference with those rights could occur and whether rights to compensation could arise.

2. PROPOSAL AND REASONS

- 2.1. There are a number of powers available to local authorities to use to facilitate development if considered justified. This report specifically addresses the request from Landsec to consider acquiring the Land in order to engage the statutory provisions in S203 of the Housing and Planning Act 2016 to override third party interests affecting the land. This would help facilitate the delivery of the comprehensive O2 Masterplan and more immediately enable implementation and delivery of Phase 1 of the scheme in accordance with adopted planning objectives.

- 2.2. Local Plan Policy DM1 (Delivery and Monitoring) says the Council will deliver the objectives and policies of the Local Plan by working proactively in its actions as a landowner and by facilitating land assembly where considered appropriate and secure appropriate scheme implementation (including multi-site developments). The reasoned justification to the policy states that Council involvement in land assembly is likely to be particularly important where land ownership issues act as a constraint on development that offers significant regeneration opportunities, which is considered to be the case in this instance.
- 2.3. If S203 is engaged, statutory authority is conferred to carry out building works even if they involve interfering with relevant rights and interests or breaching restrictions as to the user of land. The purpose and effect of S203 powers are to allow third-party rights, such as rights of way and rights to light, in or over land to be lawfully overridden (but not removed and instead substituted by entitlement to compensation under S204 of the Act). This can enable planning permissions to be implemented and beneficial development to take place, free from the threat of delays and injunction. The development does not need to be undertaken by the Council and can be undertaken by a private developer (subject to the necessary land transactions), as would be the case here if the powers were exercised (and are often used to unblock obstacles to allow approved schemes to be built).
- 2.4. The authority conferred by S203 is equivalent to powers of compulsory acquisition of land or property rights. Government guidance on the CPO process in relation to CPO acquisition is that it should be used as a last resort when all reasonable attempts to negotiate the necessary interests by agreement have failed. It is considered a similar approach should be taken in considering this case to potentially engage S203 powers and Landsec have continued to seek some form of agreement with the potentially affected parties. In the absence of any agreement, it is considered appropriate and timely to consider the request to the Council to use S203 powers. In order for the powers to be engaged the following conditions (as set out in S203(3) of the Act) must be satisfied:
- there is planning permission for the building or maintenance work (which means the erection, construction, carrying out or maintenance of any building or work) or use;
 - the building work or use must be carried out on land which has been vested in or acquired by a specified authority (which includes a local authority such as the Council) or appropriated by a local authority for planning purposes;
 - the specified authority could acquire the land using CPO powers for the purposes of the building or maintenance work or use; and
 - the building work or use must be carried out for purposes related to the purposes for which the land was vested in or acquired by the specified authority or appropriated by a local planning authority;
- 2.5. In this case the Council does not own the Land and so is not in a position to appropriate it for planning purposes (as it has done for some CIP projects), but as a specified authority it can acquire land by agreement for planning

purposes pursuant to section 227 of the TCPA 1990 and can acquire land in its area compulsorily under section 226 of the TCPA 1990:

- If it thinks that the acquisition will facilitate the carrying out of development, redevelopment or improvement on or in relation to the land; and
- If it thinks that the development, redevelopment or improvement is likely to contribute to the achievement of the promotion or improvement of the economic, social or environmental well-being of their area

2.6. As a condition for the acquisition of land in order to engage S203 includes whether the Council could acquire the land using CPO powers it should also have regard to Government Guidance on the Compulsory Purchase Process (CPO Guidance) which refers to S203 in Section 26 (and outlined in more detail in section 6 of this report). The CPO Guidance also broadly states that Councils should only use CPO powers where it is expedient to do so and where there is a compelling case in the public interest.

2.7. In considering acquiring land in order to engage S203 the Council must similarly be satisfied that there is a compelling case in the public interest and use of the powers is proportionate in that the public benefits achieved also outweigh the infringement of human rights. The scheme as approved would provide a number of public benefits which would contribute in particular to the social and environmental well-being of the Council's area including:

- 1800 new homes including 35% (c.600) affordable homes (60% at social rent);
- Health centre, community space and nursery;
- New large public green spaces;
- New green linear pedestrian/cycling route linking Finchley Road through to West End Lane;
- £10 million contribution towards creating step free access at West Hampstead station;
- c.£2.4m for local highway, transport and public realm improvements (and subject to feasibility a further £1m towards closure of Finchley Road subway and related improvements);
- Space for a potential option to create a new entrance into Finchley Road station
- New commercial and employment development including reprovision of a supermarket, gym and cinema; and
- Would also generate c.£30m+ Community Infrastructure Levy (with at least 25% to be spent on priorities identified locally)

2.8. The site, and in particular the existing service road, is subject to rights and the four interested parties who respectively own, lease and sub-lease the showrooms have rights outlined at 1.13-1.14. As the rights could result in the development being thwarted or significantly delayed, the Council has been requested to consider entering into the transaction with Landsec to enable

S203 of the Housing and Planning Act 2016 to be engaged to over-ride such rights.

- 2.9. These powers are commonly used to remove the risk of potentially affected parties seeking an injunction to delay or prevent development or demanding unrealistic “ransom value” for the release of a right/covenant. The Council has used these powers itself to support a number of CIP projects, e.g. Liddell Road, Highgate Newtown Community Centre, Central Somers Town and Maitland Park Estate. This instance is different, as the powers would override rights in supporting development over land owned and to be developed by Landsec. But it would deliver many Councils objectives, in particular bringing forward much needed housing, including a significant amount of affordable housing, and supporting improvements to West Hampstead station.
- 2.10. Unlike using CPO powers, the acquisition of land to engage S203 does not require any further confirmation, e.g. through a public inquiry or by the Secretary of State, but it can be challenged through judicial review. There are also no statutory provisions on how decisions to acquire land to engage S203 should be publicised or notified. Nevertheless, potentially affected parties have been notified about this report. This includes 87 property owners with 121 land interests (whether freehold or leasehold). This also includes the Council who holds two freehold ownerships covering c.200 properties to the south and north of the site (and by far the most predominant property owner). This does not however necessarily mean that all the properties within an ownership will be affected.
- 2.11. Whilst the immediate focus of the S203 powers is to overcome the car showroom access rights (in order assist in bringing forward Phase 1), if release or amendment of these rights cannot be achieved through negotiation the implication is that other rights (apart from those held by statutory undertakers) will also be overridden. The other potentially affected rights include rights to light which exist beyond the scheme site itself. These Rights to Light are different to the daylight and sunlight assessments that are carried out as part of the planning application process and are a separate property related legal matter.
- 2.12. Properties adjacent to the development site may have acquired these separate rights to retain an adequate amount of light into their property and these operate under a different legal framework and are assessed using a different methodology to determine what the impact could be and what level of compensation could arise.
- 2.13. As with the access rights, where evidence has been provided to demonstrate attempts to engage and seek a negotiated solution, the Council will need to be satisfied that Landsec have made further reasonable attempts to negotiate settlements in respect of these other rights before formally agreeing to exercise its S203 powers. Landsec have initiated engagement with potentially affected parties, but this is ongoing, and so this report recommends that Cabinet agrees the use of these powers in principle, and a final decision is delegated to officers based on specific conditions being satisfied, including reasonable attempts at further negotiation. However, the Council accepts that it may not be possible to reach agreement with all affected properties,

particularly those potentially affected by development of Phase 3 (which is currently in outline only) where impacts will not be able to be accurately assessed for a number of years.

- 2.14. The effect of engaging S203 is to override rights and to grant a right to statutory compensation. Under [section 204 of the Housing and Planning Act 2016](#), owners of easements or other rights which are overridden are entitled to compensation calculated on the same basis as under [sections 7 and 10 of the Compulsory Purchase Act 1965](#). Also, any dispute about compensation may be referred to the Upper Tribunal (Lands Chamber) for determination. However, where appropriate and reasonable in the circumstances, Landsec have committed to negotiate levels of compensation beyond statutory levels.
- 2.15. It is important to highlight that rights to seek relevant compensation and/or injunctive action only arise if those rights are actually infringed and the statutory override against injunctive action only operates once the land has been acquired by the Council. This would be subject to a further decision report delegated to officers in line with this report's recommendations aimed at securing the delivery of the public benefits previously outlined.

3. OPTIONS APPRAISAL

- 3.1. **Option 1-** Do nothing and don't agree to the potential use of statutory powers as outlined in the report. **This is not recommended.** Whilst there are no statutory requirements for the Council to accede to (or even consider) such requests, doing nothing risks significant delay to a development that delivers substantial public benefits and been approved by the Council as local planning authority.
- 3.2. **Option 2 –** Agree “in principle” to engage relevant powers subject to officers determining that adequate attempts have been made by Landsec to remove injunction risks by negotiating release of relevant rights and interests by agreement. **This is the recommended option.** This would be subject to further delegated decisions as outlined in the recommendations and reliant on further evidence being provided that attempts to resolve the matters outlined in this report have been sufficiently pursued.
- 3.3. **Option 3-** Agree to the immediate acquisition of the Land to exercise the Council's powers. **This is not recommended** as further procedural steps need to be confirmed and agreed, including securing indemnification on costs and for further engagement and negotiations with relevant parties to continue with further evidence to be supplied to support any subsequent decision to acquire the Land.

4. WHAT ARE THE KEY IMPACTS / RISKS? HOW WILL THEY BE ADDRESSED?

- 4.1. The public benefits justification is that in the absence of the use of powers the delivery of the significant comprehensive benefits of the approved scheme may be lost or delayed. These include the significant quantum of affordable housing, community facilities, improved connectivity through the whole development, including a direct green linear route with significant

improvements for pedestrians and cyclists and large open spaces and the £10m contribution towards West Hampstead station.

- 4.2. To avoid this risk, developers seek to agree compensation with affected neighbours in exchange for the release of these rights. Where this is not possible, as a last resort and in the interests of enabling delivery, the Council may look to provide support through the use of S203 powers, which enables development to be carried out which would otherwise constitute an actionable interference with or breach of such rights and where the statutory criteria are satisfied.
- 4.3. If the Land is not acquired there is a risk of delay if reasonable compensation cannot be agreed or could threaten delivery of the scheme through an injunction being sought. The potential use of S203 overrides those rights and removes the risk of injunction to delay the scheme or even prevent the development happening at all.

5. CONSULTATION/ENGAGEMENT

- 5.1. The scheme, planning applications, policies and guidance relevant to this report have undergone considerable levels of consultation by both Landsec and the Council generating a high level of interest and a significant number and range of comments and views.
- 5.2. Whilst there is no statutory requirement to consult on the acquisition of land in order to engage S203 powers to override rights, in addition to Landsec's engagement on the scheme and their contact with property owners who have been informed of the request, parties with a direct interest and other potentially affected parties have separately been notified by the Council of this report.
- 5.3. Officers in planning, legal, finance and property have been involved in consideration of the request and the submitted justifications in the preparation of this report. West Hampstead, South Hampstead and Frognal ward Councillors have been briefed on the request to engage these powers and the potential implications (as potentially affected properties fall within these wards).
- 5.4. The Council must, when carrying out the Council's functions, have due regard to section 149 of the Equality Act 2010 (the Public Sector Equality Duty). The report has been prepared considering the related socio-economic assessments carried out for the schemes planning applications and Equality Impact Assessment (EQIA) carried out for the adopted guidance that supported the granting of approval. This indicated that there are not considered to be disproportionate impacts on people with protected characteristics and a number of positive impacts would arise from the scheme that this decision aims to support. It is also not currently considered that the potential infringement of the property rights outlined would significantly affect people of any protected characteristics group differently from people in other protected characteristics groups or the rest of the general population.

- 5.5. As an “in principle” decision subject to a number of qualifications and requiring further engagement with potentially affected parties, a decision to formally agree to use the powers will undergo an EQIA. This would be reviewed and updated as required to consider the nature of any further supplementary decisions that may be sought to put the powers into effect.

6. LEGAL IMPLICATIONS

- 6.1. Legal considerations are incorporated in the body of this report and provides the background to the request from Landsec for the Council to consider the potential use of its planning powers to acquire an interest in the relevant land in the O2 masterplan site for planning purposes under section 227 of the of the Town and Country Planning Act 1990. This would in turn engage S203 of the Housing and Planning Act 2016 to facilitate the delivery of the scheme and the associated public benefits.
- 6.2. S203 of the Housing and Planning Act 2016 is a legal provision that permits the carrying out of development notwithstanding that it would interfere with an easement, covenant, or other third-party rights. The parties with the benefit of such rights would no longer be able to protect the right through the use of injunction but would be entitled to statutory compensation. The protection provided by S203 can apply to the Council and to any party deriving title to the land from the Council – in this case the relevant land would be transferred back to Landsec who would then be able to carry out development.
- 6.3. As this report seeks in principle authorisation of the acquisition and disposal of the Land in order to engage S203 powers at this stage, and being subject to satisfying specific conditions, this has limited immediate legal implications (though a decision could in theory be subject to an application for judicial review). A further delegated decision to formally agree to engage S203 powers by entering into a land transaction would be required and any subsequent decision will be subject to further specialised legal and property advice.
- 6.4. As outlined earlier, it is considered that the acquisition of land to engage S203 powers requires similar justifications and engages similar principles to those that arise in respect of the use of CPO powers. It is therefore useful to have regard to the CPO Guidance which refers specifically to the use of S203 powers at section 26, but the guidance that it provides on use of CPO powers is also considered to be relevant to the use of S203 powers.
- 6.5. The CPO Guidance states that Councils should only use CPO powers (to compulsorily acquire third party land) where it is expedient to do so and where there is a compelling case in the public interest. Similarly, it is considered that the Council should only consider acquiring land in order to engage S203 powers to override third party interests and rights where it is satisfied that there is a compelling case in the public interest that the powers conferred by S203 be engaged in order to facilitate the carrying out of the development within a reasonable time and in particular that:

- The proposed development will contribute to the promotion or improvement of the economic, social or environmental well-being of the Council's area;
- The benefits of the proposed development could not be delivered without interfering with third party interests and rights;
- The third-party interests and rights to be interfered with cannot reasonably be released by agreement with affected owners within a reasonable time (and adequate evidence of satisfactory engagement, and where appropriate negotiation, has been provided to the Council);
- The ability to carry out the development, including for financial or viability reasons, is prejudiced due to the risk of injunction in respect of the third-party interests and rights, and adequate attempts have been made to remove the injunction risks;
- A decision to acquire in order to engage S203 would be broadly consistent with advice given in the CPO Guidance;
- The use of the powers is proportionate (the public benefits achieved outweigh the infringement of human rights); and
- The developer and the Council have consulted with rights holders regarding the engagement of S203 wherever feasible and appropriate in the circumstances of the case.

7. RESOURCE IMPLICATIONS

- 7.1. The recommendations in the report will require internal and external resources to implement – officer time in planning, legal and property services and external legal and consultancy support. They will also involve a number of land transactions, the final form of which remain to be negotiated and agreed.
- 7.2. Normally it would be expected that this would involve considerable cost to the Council. However, Landsec have agreed in principle to an Indemnity Agreement to cover all related Council costs. This would cover the Council officers' time and extend to external consultants being commissioned and, where needed, further legal and property advice sought, in both the lead up to a decision to engage powers and in implementing that decision and associated legal and land transaction processes.
- 7.3. It is proposed that the drawing up and agreement of final heads of terms of an Indemnity Agreement be delegated as per the report's recommendations. The Indemnity Agreement will need to be carefully drawn up to ensure it covers all potential costs the Council may incur and does not expose the Council to financial risks. This includes claims for compensation that may arise if powers are engaged and Landsec has also agreed to indemnify the Council against any liability for such compensation.
- 7.4. While the legal and financial details of the land transactions needs to be agreed with Landsec, they will likely be for a nominal amount and there will be no Stamp Duty Land Tax to pay on the transactions. Therefore, the Council would not incur any costs through these property transactions other than conveyancing and other legal costs which would also be covered by the Indemnity Agreement.

8. ENVIRONMENTAL IMPLICATIONS

- 8.1. The planning permission and planning applications related to this decision have undergone very significant environmental assessments through the planning application process in bringing forward an acceptable scheme which delivers significant environmental benefits including reducing car dominance, significant greening and planting and creation of large public green spaces.
- 8.2. Building on what is largely a dated shopping centre and significant expanse of car parking the scheme is intended to be transformational and make far better use of underutilised land to help deliver the Councils priorities and meet a full range of environmental and design policies and requirements set out in adopted plans, supplementary guidance and other Council strategies.

9. CONCLUSION AND TIMETABLE FOR IMPLEMENTATION

- 9.1. There is a strong public interest case for the Council to consider acquiring land for planning purposes under section 227 of the Town and Country Planning Act 1990, to engage S203 of the Housing and Planning Act 2016 and enable development to progress and public benefits to be realised.
- 9.2. The potential engagement of these powers is considered to be proportionate and justified, notwithstanding interference with private rights, including rights of light of some landowners, affected by the primary purpose to override other third-party rights over the land involved and therefore this report seeks support for an “in principle” resolution to the acquisition of the Land to facilitate delivery of the scheme.
- 9.3. This allows further time for further negotiation to be undertaken with affected parties before any subsequent delegated decision to formally agree to acquire the Land and engage S203 powers. As the current development programme envisages preparatory works taking place in late 2025/early 2026, but which could be impacted by the third party rights, a subsequent delegated officer report formally agreeing to acquire the Land (if needed) could be as early as autumn 2025.
- 9.4. Whilst the request is focussed on the use of S203 powers, which this report specifically addresses, there remains a possibility that the Council may in the future be asked to consider the potential use of its CPO powers in respect of Phase 2 of the development. Separate consideration of those powers would need to take place and, if considered justified, be subject to a further Cabinet report to consider the use of these powers.

10. APPENDICES

Appendix 1 - O2 masterplan site and phases

Appendix 2 - Landsecs ownership

Appendix 3 - O2 Masterplan site and ownerships