

CABINET

16th FEBRUARY 2011

COMPULSORY PURCHASE ORDER: LAND AT SUNDERLAND RETAIL PARK, NEWCASTLE ROAD

REPORT OF THE DEPUTY CHIEF EXECUTIVE AND THE EXECUTIVE DIRECTOR OF COMMERCIAL AND CORPORATE SERVICES

Purpose of Report

This report follows on from the previous report considered by Cabinet on 1st December 2010 (copy at Appendix 7), when the Cabinet approved, in principle, the use of compulsory purchase powers under section 226(1)(a) of the Town and County Planning Act 1990 ("the 1990 Act") in respect of land at Sunderland Retail Park ("SRP"). Approval is now sought to progress with land assembly and to implement the use of these powers for the purpose of facilitating the carrying out of the comprehensive redevelopment of SRP, as shown on the plan at **Appendix 3**. This redevelopment will provide a new retail superstore, associated public realm improvements and infrastructure, with the aim of achieving the promotion and improvement of the economic, social and environmental well-being of the area. An application for outline planning permission for this redevelopment Scheme was considered by the Planning and Highways Committee on 5th October 2010. A copy of the report to the Planning and Highways Committee on the planning application is contained in **Appendix 8**. Outline planning permission was subsequently granted for the Scheme on 27 October 2010 (copy at **Appendix 9**). It is considered that there is a compelling case in the public interest which justifies the use of CPO powers in this case. The compelling case in the public interest and the economic, social and environmental benefits to the well-being of the area are summarised in this report and set out more fully in the draft statement of reasons for the CPO which is attached at **Appendix 4**. Members should also read the Planning and Highways Committee report dated 5th October 2010 and the Cabinet report dated 1st December 2010, and the draft statement of reasons in conjunction with this report.

Description of Decision

Cabinet is recommended to:

1. Authorise the making of a Compulsory Purchase Order ("CPO") to be known as The Council of the City of Sunderland (Sunderland Retail Park) Compulsory Purchase Order 2011 under section 226(1)(a) of the 1990 Act to acquire land and under section 13 of the Local Government (Miscellaneous Provisions) Act 1976 ("the 1976 Act") in order to acquire new rights at Sunderland Retail Park in order to facilitate the carrying out of its comprehensive redevelopment;
2. Authorise any of the following officers:- the Chief Executive, Executive Director of Commercial and Corporate Services or the Head of Law and Governance to make minor amendments, modifications or deletions to the CPO schedule of interests and map, should this be necessary; and to finalise and make the CPO comprising the CPO and Schedule of interests and CPO map;

3. Authorise the Head of Law and Governance to serve notice of making of the CPO on all owners and occupiers of the site and all land interests identified.
4. Authorise the Deputy Chief Executive and the Head of Law and Governance to take all necessary actions to secure confirmation of the CPO by the Secretary of State for Communities and Local Government (“the Secretary of State”), including promoting the Council’s case at public inquiry if necessary and to continue negotiations with a view, in tandem with the exercise of CPO powers, to attempt to reach agreement with affected landowners.
5. Subject to confirmation of the CPO by the Secretary of State, authorise the Deputy Chief Executive and Head of Law and Governance to acquire title and/or possession of the CPO land, including as appropriate, by:-
 - a. Serving Notice of Confirmation of the CPO on owners and occupiers;
 - b. Serving Notice of Intention to Execute a General Vesting Declaration on owners and occupiers to transfer the title of the land included in the CPO to the Council;
 - c. Executing the General Vesting Declaration;
 - d. Serve Notices to Treat and/or Notices of Entry; and,
 - e. Acquiring land and interests through negotiation.
6. Authorise the Deputy Chief Executive and Head of Law and Governance to acquire and dispose of any land or interests required to enable the proposed redevelopment of the Sunderland Retail Park to proceed, subject to appropriate indemnity provisions being in place with the developer.

BACKGROUND

Sunderland Retail Park

Need for regeneration

1. Sunderland Retail Park (“SRP”), shown edged red on the plan contained in **Appendix 2**, extends to 6.23 ha and is located approximately 1km to the north of Sunderland city centre. It is bounded to the west by Newcastle Road, to the south by Monk Street, Shore Street, Roker Avenue and to the west and north by Portobello Lane.
2. SRP occupies a prominent gateway site on the principal approach to the City Centre from the north. It comprises 12 retail units, a bowling alley and former night club, a McDonalds “drive thru” restaurant and a former Reg Vardy car showroom, all with associated parking. The site contains a mixture of vacant and occupied buildings but gives the appearance of a predominantly poorly performing retail offer. In particular all but 3 of the retail units (one of which is subdivided) are vacant. The only other occupiers remaining are Macdonalds and Sunderland Bowl. Consequently large areas of car parking are un-used. The vacant units are characterised by closed security shutters, an increasing proliferation of graffiti, and a general air of neglect. The site lacks any vibrancy and vitality and is no longer a retail destination of choice which exacerbates its poor appearance.

3. Whilst SRP is in an accessible location, for car borne traffic and for users of bus and Metro services, it does not provide a retail offer that maximises its accessibility. In particular it has poor permeability for pedestrians who have been dropped off by public transport outside of SRP or for those accessing the site from nearby residential areas.
4. A number of the wards surrounding SRP have some of the highest unemployment figures within Sunderland. Issues with the labour market in Sunderland are identified in Sunderland Economic Masterplan (adopted by Full Council on 29 September 2010), which notes that Sunderland still suffers from high unemployment and a low skills base. The Masterplan notes that the situation is inextricably linked with deprivation, low educational attainment and low skills. Combined, these produce a major drag on Sunderland's ability to fulfil its economic potential. The Monkwearmouth area also experiences higher levels of poor health and crime than the national average.

Need for retail investment

5. In terms of access to shopping facilities for local residents, The Sunderland Retail Needs Assessment produced by Roger Tym & Partners (published in September 2009) found that there is a localised deficiency in convenience goods provision in the north of Sunderland along with a qualitative need for additional food and grocery provision.
6. There is also currently significant trade leakage from the Sunderland North area of convenience expenditure to the Asda store at Boldon Colliery in South Tyneside.

Cabinet Meeting, 1 December 2010

7. At its meeting on 1 December 2010, Cabinet considered a report on proposals to regenerate SRP through a new retail development including a new food retail superstore. Members are advised to remind themselves of the terms of this report, a copy of which is contained in **Appendix 7**.
8. Cabinet resolved in principle to use the Council's compulsory purchase powers under section 226(1)(a) of the 1990 Act and, if necessary, to ensure that all relevant interests in SRP are brought into the ownership of the Council in order to enable the delivery of the Scheme.
9. The following approvals were also granted:
 - a. The Deputy Chief Executive was authorised to appoint suitable property and legal advisers in respect of the CPO process;
 - b. The Deputy Chief Executive and Head of Law Governance, in consultation with the Portfolio Holder, were authorised to agree and enter into appropriate indemnification arrangements with the developer in respect of the costs to the Council of the CPO process;
 - c. The Deputy Chief Executive and the Head of Law and Governance were authorised to undertake a land referencing exercise to identify all owners, tenants, occupiers and others with a legal interest in the Site and serve requisitions for information under s. 16 of the 1976 Act on all potential owners of legal interests in the site.

The progress achieved following these approvals is described later in this report at **paragraph 84** .

THE COMPULSORY PURCHASE POWERS

10. For the reasons set out in this report and in the draft Statement of Reasons contained in **Appendix 5**, Cabinet is requested to authorise the use of the Council's compulsory purchase powers in order to assemble land and interests to allow the comprehensive redevelopment of SRP to proceed. In considering whether to exercise such powers, it is important that Members understand both the statutory provisions from which the powers derive as well as Government guidance on the use of the powers which is set out in ODPM Circular 06/2004 Compulsory Purchase and the Crichel Down Rules ("the Circular").
11. Section 226(1)(a) of the 1990 Act gives the Council the power to acquire land compulsorily in its area if the authority thinks the acquisition will facilitate the carrying out of development, re-development or improvement on or in relation to the land. This can include the assembly of a site to facilitate either a public or private sector development.
12. However, under s.226(1A) of the 1990 Act, before exercising the power under s.226(1)(a), the Council must also be satisfied that the proposals are likely to "contribute to the achievement" of any one or more of the following objects—
 - 1) the promotion or improvement of the economic well-being of Sunderland;
 - 2) the promotion or improvement of the social well-being of Sunderland; or
 - 3) the promotion or improvement of the environmental well-being of Sunderland.
13. Advice on the exercise of the s. 226(1) powers is set out in Appendix A to the Circular.
14. Paragraph 17 of the Circular sets out the key test that must be applied by the Council in considering whether to make a compulsory purchase order; that is to say that a "*compulsory purchase order should only be made where there is a compelling case in the public interest. An acquiring authority should be sure that the purposes for which it is making a compulsory purchase order sufficiently justify interfering with the human rights of those with an interest in the land affected. Regard should be had, in particular, to the provisions of Article 1 of the First Protocol to the European Convention on Human Rights...*"
15. The requirement of a compelling case in the public interest in paragraph 17 encapsulates the key requirement of proportionality under the European Convention on Human Rights as explained further in Paragraphs 87- 91 below.

PLANNING, REGENERATION AND ECONOMIC POLICY

16. The local development plan for the Sunderland area comprises the saved policies contained in the Council's Unitary Development Plan 1998, as revised by Alteration Number 2 to the Development Plan adopted in September 2007.
17. SRP is located on the inset plan for Monkwearmouth in the UDP proposals map. The UDP explains that an inset plan was required for Monkwearmouth because major change was anticipated in the locality including significant new commercial and residential developments, environmental enhancements and improvements to transport infrastructure.
18. Parts of the SRP site are covered by saved Policy NA44 which allocates the land for a mixture of uses including retailing and other main town centre uses subject to the application of the sequential test and a retail impact assessment. This policy also identifies the need for development to contribute to a balanced distribution of facilities accessible to all sectors of the community, on foot and by a range of transportation.
19. The explanation to NA44 states that the locality is highly accessible from a wide area by bus and car and in future by a proposed Metro Station (which now exists at the northern end of SRP). In addition, there is a large population within the densely populated residential areas to the north, west and east of the location. The UDP recognises that the area is highly suitable as a focus for retail and commercial activity and that there is a clear opportunity to regenerate this high profile, but presently unattractive, locality and to effect environmental improvements to this gateway site.
20. The south western corner of SRP falls within saved Policy NA48 which seeks to promote environmental improvements to the commercial buildings in the area north of Roker Avenue and to upgrade the visual environment in this locality.
21. The key saved retail policy is S1 which seeks to enhance the City's shopping provision by encouraging a wide range of attractive, well distributed facilities to meet future shopping and related needs. The policy provides that new retail development will be based in existing centres whilst development elsewhere will be subject to the sequential test, be in accordance with other policies in the UDP, should complement existing facilities and be accessible to all groups by a variety of modes of transport.
22. Economic development policy EC1(iv) of the UDP provides that the Council will encourage development proposals and initiatives which target areas of economic and social deprivation.
23. The Indices of Multiple Deprivation 2007 published by DCLG measures overall multiple deprivation at a small area level (referred to as Lower Super Output Areas (LSOAs)). There are 188 LSOAs in Sunderland and 4 of the most 20 deprived LSOAs in the City are situated within close proximity to SRP.

24. Further, Policy EC3(iv) states that the Council will support new economic development which involves the re-use and enhancement of previously developed sites.
25. The Sunderland Economic Masterplan also highlights the need in Sunderland for new and better shops. Whilst addressed in the context of the City Centre, the Masterplan highlights the issues connected with the loss of trade to rival retail centres which has had a detrimental effect on the City economy. In the case of SRP, there are no sites within the City Centre upon which the Scheme for SRP could be accommodated and the impacts of the Scheme on the City Centre are acceptable. Accordingly, the only way to address the current trade leakage and the localised deficiency in convenience floorspace in North Sunderland is to address the quality of retail provision at SRP.
26. The Masterplan also states that public areas need to be improved and areas that are currently at risk of decline need to be upgraded so that they remain attractive areas to walk through.
27. As part of the emerging Local Development Framework (LDF), the Council agreed a revised version of its Core Strategy Preferred Options in March 2010. Although relatively little weight can be given to the Strategy at this stage, it provides up to date and continued confirmation of the underlying principles behind the saved policies in the UDP.
28. The following preferred options policies are relevant to the proposed development at SRP:-

- CS1 Spatial Development, Growth and Regeneration in Sunderland

This policy seeks to achieve a sustainable spatial distribution of economic development in the City including new retail development. It states that the priority for new convenience retailing will be focused towards the City Centre, Houghton-le-Spring Town Centre and North Sunderland.

The supporting text refers to the findings of the City wide Retail Needs Assessment for Sunderland produced in September 2009 as part of the evidence base for the LDF. This Assessment highlighted the localised qualitative deficiencies in convenience goods provision in North Sunderland and Houghton Town Centre.

In relation to North Sunderland, the Zone encompassing the Castletown, Monkwearmouth and Southwick areas (Zone 2) has the lowest convenience goods retention rate in the City with most residents in this Zone travelling to the Asda store in Boldon Colliery in neighbouring South Tyneside for their convenience shopping (Zone 9). As a consequence, there is a quantitative and qualitative need to clawback this substantial leakage of convenience expenditure out of the City to Boldon.

- CS8 Sunderland North

This policy promotes the transformation of the Sunderland North area in the period up to 2026. The centre of Monkwearmouth will be revitalised and strong linkages will allow it to provide a complimentary retail and leisure role to the city centre.

The supporting text recognises the existing localised deficiency in convenience provision and that the current retail provision in North Sunderland is not well distributed. It provides that new retail development will be encouraged which provides high quality retail facilities to serve the sub-area.

29. In terms of national planning policy, the following are of particular relevance to the Scheme:
30. Planning Policy Statement 1: Delivering Sustainable Development (2005) sets out the Government's vision for planning and the key policies and principles which should underpin the planning system. PPS1 notes that one of the key objectives of planning should be to make suitable land available for development in line with economic, social and environmental objectives to improve people's quality of life. It should contribute to sustainable economic development, ensure high quality development and ensure that development supports existing communities providing good access to jobs and key services for all members of the community.
31. PPS1 also states that planning authorities should promote urban regeneration to improve the wellbeing of communities and their facilities, including improved access to shops.
32. Planning Policy Statement 4 - Planning for Sustainable Economic Growth (2009) sets out the Government's overarching objective of achieving sustainable economic growth. It states that planning applications that secure such economic growth should be treated favourably.
33. For retail developments that are not in an existing centre (such as SRP) and are not in accordance with an up to date development plan, PPS4 requires that the applicant undertakes a sequential assessment to determine whether there is an alternative, town centre or edge of centre site that could accommodate the particular development proposal which is available, suitable and viable. In addition, a retail impact assessment is also required to determine the level of impact that the proposal will have on existing centres and out of centre allocated sites. These sequential and retail impact tests are also incorporated within the UDP policies relevant to SRP and the development.

34. In relation to regional planning policy, the Regional Spatial Strategy for the North East (2008) sets out a long term strategy for the scale, location and phasing of development in the region. The Strategy promotes an urban and rural renaissance, the sustainable development of the region and a sequential approach to development proposals. The Strategy includes the following specific references to Sunderland:-
- The concentration of the majority of new development to be in Sunderland and Washington with development to meet local needs in Houghton and Hetton;
 - Regeneration of central Sunderland is supported with economic, retail and leisure development to be focused on the city centre.
35. The Regional Economic Strategy 2006-2016 (Leading The Way) has at its primary objective an increase from 80% to 90% GVA (Gross Added Value) per head by 2016. This is to be achieved by:
- tackling worklessness and unemployment to increase economic activity;
 - creating 61,000 to 73,000 new jobs by 2016;
 - improving productivity;
 - raising GVA;
 - creating 18,500 to 22,000 new businesses by 2016.

SCHEME PROPOSALS

Evolution of the Scheme and consideration of alternatives

36. The proposed redevelopment of SRP has been through a number of design iterations prior to an outline planning application being made by the then owner of the site, Mountview Securities Limited ("Mountview"), in August 2008. Various options were considered for the siting of the foodstore and its massing, and the scale and siting of the additional retail units, and account was taken of views expressed during public consultation
37. A key consideration was the need for the foodstore to be of a sufficient scale to claw back trade from other stores outside of the City, and to be accompanied by a selection of thriving comparison retail units and/or leisure uses. Having established the scale of development required, the principal considerations for the location and composition of the development were:
- a. The existing layout and the desire to retain existing retail units or to relocate existing occupiers within SRP.
 - b. The minimum size requirements of the proposed food retail store.
 - c. The highways network and access solution.
 - d. The need to provide a more efficient car parking layout and servicing solutions.
 - e. The need to ensure an attractive frontage onto key approaches to SRP in order to attract maximum footfall, particularly from the Metro station.

38. Following the submission of the initial planning application the Council released the Sunderland Retail Needs Assessment prepared by Roger Tym & Partners (September 2009) and Planning Policy Statement 4 was issued (December 2009). The Council's retail advisors RTP reviewed Mountview's retail assessment and recommended a reduction in the size of the superstore. At the same time, issues of site assembly and scheme content led Mountview to revisit the scheme and reduce the scale of the foodstore.
39. Ultimately, despite various design solutions being considered, it was not possible to avoid impinging upon land in which third parties have an interest. The Scheme selected was the least intrusive whilst maintaining the key components of the Scheme, notably the store size required to provide the necessary quantum and quality of convenience goods offer to claw back trade and avoid trade leakage, appropriate car parking and access arrangements and ensuring that comprehensive redevelopment was achieved through the creation or replacement of new retail units and the improvement of existing units.

Planning position

40. Following public consultation, revisions to outline planning application (ref: 08/03336/OUT) were received by the Council on 5 August 2010 on behalf of Mountview.
41. The comprehensive redevelopment of SRP in accordance with the revised planning application is supported by site specific policies NA44 and NA48 and economic policies EC1(iv) and EC3(iv) of the Council's UDP referred to above. In addition, the development accords with key retail policy S1 as it will meet the established need for additional convenience provision in Sunderland North and will seek to clawback the current substantial leakage of convenience expenditure from outside the City.
42. The comprehensive redevelopment of SRP is also consistent with policies CS1 and CS8 of the emerging Core Strategy.
43. The Scheme is also supported by PPS1 and PPS4 since it will help to promote sustainable economic growth and provide local communities with better access to facilities such as shops. The retail assessment submitted with the planning application also satisfied the requirements of PPS4. In particular it has been demonstrated that there are no sequentially preferable sites in the town centre or on edge of centre sites to accommodate the need which the particular development at SRP is intended to meet, namely the established need for additional convenience provision in North Sunderland and to successfully clawback the retail expenditure currently lost from the Sunderland area. In addition, the retail impact assessment has concluded there is no clear evidence that the development proposals at SRP would have a significant adverse impact on existing centres.
44. In addition the Scheme is also compatible with the RSS and the key objectives of the Regional Economic Strategy.

45. Outline planning permission was granted for the Development by the Council on 27 October 2010 which comprised:
- 1) The demolition of the majority of the existing buildings on the Retail Park site, including the Bowling Alley and former Reg Vardy car showroom;
 - 2) The construction of a new food superstore of 16,140m² gross external area (GEA) and net retail sales area of 8,378m²;
 - 3) The retention and recladding of an existing retail unit of 1,168 m² GEA and 934m² net retail sales area;
 - 4) The erection of four additional retail units totalling 2,661m² GEA and 2,129 m² net retail sales area;
 - 5) The retention and recladding of the existing Farmfoods/Blockbuster unit;
 - 6) The provision of 900 parking spaces to service the entire development;
 - 7) The creation of new vehicular accesses to the site, the reopening of a section of highway to emergency vehicles, and the resurfacing/landscaping and the stopping up of the highway.
46. For further detail, Members should read the report to the Planning and Highways Committee in respect of the outline planning application which was considered on 5 October 2010 and is contained in **Appendix 8**.
47. The Development will also involve a major highway improvement scheme in respect of the adjoining Wheatsheaf gyratory. These works will be carried out pursuant to an agreement between the Developer and the Council under s278 of the Highways Act 1980.
48. The Developer has applied to the Secretary of State for an order under s.247 of the 1990 Act to stop-up the areas of public highway in order to enable the Scheme to proceed. This stopping-up order has now been made and a copy is contained in **Appendix 10**.
49. Together these components constitute the comprehensive redevelopment of SRP ("the Scheme").

REASONS FOR THE DECISION

Issues for the making and confirmation of the CPO

50. Members first need to be satisfied that the requirements of s. 226(1)(a) and (1A) of the 1990 Act will be met for the purposes of making of the CPO. In this respect, it is considered that s. 226(1)(a) will be satisfied because the acquisition of the relevant interests at SRP will facilitate the redevelopment of the site by Tesco for the Scheme. Further, in light of the significant environmental improvements that result from the physical redevelopment of SRP, the economic benefits of the Scheme in clawing back retail expenditure and generating new employment as well as the improved access to facilities for local people, it is considered that the requirements of s.226(1A) will be

satisfied; that is to say that it is considered that the Scheme would be likely to contribute to the achievement of the promotion or improvement of the economic, social and environmental wellbeing of the area.

51. The Circular provides advice, both generally and at paragraph 16, Appendix A, on the key factors which the Secretary of State can be expected to consider when deciding whether to confirm an order made under section 226(1)(a) of the 1990 Act. Members must consider these factors now in considering whether to make the CPO and so they are set out below, with reference to the relevant sections of the Circular together with an analysis in relation to the proposed use of CPO powers to deliver the Scheme.

52. Paragraph 20-21, Resources Implications of the Scheme

53. A CPO indemnity agreement has been negotiated with Tesco, under which Tesco is required to indemnify the Council for all costs, liabilities and expenses in promoting the proposed CPO, for the costs of any land acquisition and for all compensation payable pursuant to a CPO. At the time of the preparation of this report the CPO indemnity agreement is being circulated for signature and will be completed imminently. Tesco is also responsible for implementation of the Scheme at its own cost and there is no need for any public sector funding.

54. Tesco has made it clear, both in its statements and by its actions in progressing land acquisitions at SRP and its planning application for the Scheme, that obtaining a trading position in the city is a priority objective. Tesco has also confirmed that it wishes to progress with the Scheme as soon as possible once the relevant interests at SRP have been acquired.

55. Paragraph 22-23, Impediments to implementation

56. Tesco has confirmed that it controls all land interests in SRP, except those included in the proposed CPO, that are necessary to enable the Scheme to proceed.

57. Tesco has obtained outline planning permission for the Scheme, described above, and intends to submit its application for approval of reserved matters imminently. The Council has already held pre-application discussions with Tesco in connection with the reserved matters submission.

58. Other potential impediments are in the process of being resolved. Notably, Tesco require a stopping up order to be made in respect of certain highways affecting the site. An application has been made by Tesco under s.247 of the 1990 Act and an order has been made by the Secretary of State (copy at **Appendix 10**). An agreement under section 278 of the Highways Act 1980 is also currently being negotiated in order to secure the improvement of the highways infrastructure around SRP and this is expected to be completed shortly.

59. Accordingly, the Scheme is not likely to be blocked by any impediment to implementation.

60. Paragraph 24-25, Negotiation

61. Tesco, through its agent GL Hearn, has led negotiations with the leasehold owners/occupiers of the properties required to implement the Scheme. The current proposal for Blockbuster, Farmfoods and Macdonalds is that the

occupiers are retained within the units during and following the construction of the Scheme. The Netto unit would be demolished, but there is an offer to relocate the store to another unit within the development. Notwithstanding these offers, to date it has not been possible to acquire these interests through private treaty, although efforts are continuing.

62. It is hoped that agreements can be reached with each of the owners through negotiation. However, the use of compulsory purchase powers is required in the event that the attempts to acquire by agreement fail. The approach of making a CPO in parallel with conducting negotiations to acquire the relevant interests by agreement is in accordance with the guidance set out in the above paragraphs of the Circular.
63. Paragraph 16 (i) of Appendix A, whether the purpose for which the land is being acquired fits in with the adopted and/or emerging planning framework
64. As set out in the section on the planning position of the Scheme at **paragraphs 40-49** above, the Scheme is in line with the adopted and emerging development plan. This is borne out by the fact that the Council has granted planning permission for the Scheme and this Report should be read together with the report to the Planning and Highways committee on the planning application (**Appendix 8**).
65. Paragraph 16 (ii) of Appendix A, the extent to which the proposed purpose will contribute to the achievement of the promotion or improvement of the economic, social or environmental wellbeing of the area
66. The proposed compulsory acquisition of the Order Land will facilitate the carrying out of the comprehensive redevelopment of SRP as part of the Scheme.
67. The Scheme will regenerate SRP physically and economically, bringing with it new jobs, investment and positive environmental benefits. The proposed superstore will be designed to the highest quality to ensure that it complements its surroundings and that it is easily accessible for all users.
68. The Scheme will give rise to the following benefits:
 - a. The superstore element of the Scheme will meet the quantitative need for additional food and grocery provision in the Sunderland North area, and will reduce the leakage of convenience expenditure to the Asda store at Boldon Colliery. This will improve access to facilities for local people and will assist with the economic revitalisation of the area by ensuring that local trade is retained.
 - b. It will improve the retail offer of Sunderland Retail Park by offering five retail units alongside the foodstore and retaining the two retail units occupied by Farmfoods and Blockbuster. This will attract other businesses into the area and increasing footfall into the SRP thereby having a catalytic effect, which will further assist local economic conditions.
 - c. It is estimated that the foodstore element of the Scheme alone will generate 400 full time and part jobs on the Site compared

to the existing 50 jobs estimated to be on site at the moment. This excludes additional jobs created within the construction period. It is predicted that the majority of the jobs created on the site will go to residents within the surrounding local areas, which this report has noted are in much need of employment opportunities.

- d. The design of the store will incorporate sustainable design features to promote energy efficiency, minimise any impact on the environment and ensure the store is operated in as sustainable a manner as is currently possible.
 - e. At present the site has a high level of vacant units, some of which have been vandalised and these factors detract from the visual appearance of the site and affect visitors' perspective of how safe the site is. The proposal will provide an enhanced landscape buffer around the perimeter of the site and throughout the car park. This landscaping buffer will also provide an improved habitat area for wildlife within the site and could also attract further wildlife found within the urban area to the site.
 - f. The Scheme will improve visitors' perception of safety within the site through increased security measures, natural surveillance from the occupied retail units and increased visitor numbers. The proposed external lighting scheme will also improve the appearance of, and perception of safety within the site.
 - g. The Scheme includes various improvements to the surrounding highway network and seeks to provide a number of safe crossings into SRP from the surrounding area, thereby improving accessibility.
 - h. The provision of a new and direct pedestrian walkway will significantly improve access from SRP to the Stadium of Light Metro station to the north of the site. The incorporation of a bus stop in a central location within the site will further enhance access to public transport in a site which is in close proximity to a Metro station and a range of bus services.
 - i. Measures taken to improve pedestrian access to and within the site, the provision of cycle parking facilities, and improved access to public transport services aim to encourage the use of more sustainable modes of transport, and reduce the impact of the Scheme on traffic congestion and pollution.
69. The development of the Scheme would substantially improve the visual appearance of SRP which currently has largely vacant units and suffers from vandalism. Increased occupancy, the provision of a new external lighting scheme and landscaping on the redeveloped site would reduce perceptions of

crime. This would constitute a marked improvement to the environmental wellbeing of the area. The Scheme would provide an attractive retail environment of a contemporary design with much needed quantitative and qualitative improvement to convenience and comparison goods provision. This will improve the public perception of the area by clawing back trade thereby stimulating economic growth and new jobs would benefit local people. The Scheme will therefore stimulate improvements to the social and economic wellbeing of the area.

70. As a consequence, when applying the statutory tests in Section 226(1)(a) and s.226(1A) of the 1990 Act it is considered that the proposed use of CPO powers in this instance is likely to contribute to the promotion or improvement of the economic, social and environmental well-being of the Council's area.
71. In addition, in the light of the substantial physical, social and economic benefits that would arise from the proposed development, it is considered that there is a compelling case in the public interest to justify the use of CPO powers in order to facilitate the development of the Scheme.
72. Paragraph 16 (iii) of Appendix A, the potential financial viability of the scheme for which the land is being acquired;
73. The financial viability of the scheme is not in question, given the identity of the developer and the nature of the end use. Tesco has advanced countless retail schemes across the UK and has a huge amount of experience in regenerating brownfield sites. Tesco has already shown significant commitment to the Scheme in acquiring the majority of the land comprising SRP as well as obtaining planning permission for the Scheme.
74. Paragraph 16 (iv) of Appendix A, whether the purpose for which the acquiring authority is proposing to acquire the land could be achieved by any other means, having regard to alternative locations and alternative proposals for the site itself.
75. **Paragraphs 36-39** above describe the various options that were considered by Mountview and Tesco prior to submitting the revisions to their outline planning application. It is clear for the reasons set out above that the option selected involves the least possible intervention whilst maintaining the integrity of the Scheme and delivery of the public benefits identified in this report.
76. As part of its planning application, Mountview and Tesco were required as part of a Retail Impact Assessment to consider alternative sites. This found that *"there are no suitable, viable or available in centre or edge-of centre sites for an appropriately scaled superstore to serve primarily the residents of North Sunderland"*. In any event, as this report has shown, SRP is in need of regeneration and other than the Scheme, there are no competing proposals for its redevelopment or refurbishment. Tesco also own the majority of SRP and so it seems unlikely that another preferable proposal would come forward for the regeneration of SRP. Indeed, if it were not for the Scheme, it is likely that SRP would continue to fail and that the social, economic and environmental conditions of the surrounding area would worsen.

The need for the Order Land

77. Mountview initially indicated that the preferred operator for the superstore component of the scheme would be Tesco. Following the grant of the planning permission, Mountview transferred its land interests at SRP to Tesco, who will be the developer of the Scheme and the operator of the foodstore.
78. Although Tesco owns the majority of the freehold interests in SRP, there are three units within the retail park (one of which is subdivided), subject to leases, that will need to be acquired in order to allow the Scheme to proceed. The drawing contained in **Appendix 6** overlays the proposed scheme on top of the existing units to be acquired to illustrate graphically why these units must be acquired.
79. The units to be acquired through the CPO are also described in the schedule of interests contained in **Appendix 4**, whilst **Appendix 11** provides a narrative in respect of each plot explaining the reasons why the interest must be acquired to progress the Scheme.
80. In summary, the car parking and access arrangements for Macdonalds and Blockbuster/Farmfoods units must be rearranged as part of the redevelopment. The Blockbuster/Farmfoods units will also require re-cladding because it would otherwise have a visually detrimental effect on the Scheme. The other unit occupied by Netto is physically located in an area that is crucial for car parking and access provision for the new Scheme and will need to be demolished.
81. Tesco, through its agent GL Hearn, have led negotiations with the leasehold owners/occupiers of the properties required to implement the Scheme. The current proposal for Blockbuster, Farmfoods and Macdonalds is that the occupiers are retained within the units during and following the construction of the Scheme. The Netto unit would be demolished, but there is an offer to relocate the store to another unit within the Scheme. Notwithstanding these offers, to date it has not been possible to acquire these interests through private treaty, although efforts are continuing.
82. It is hoped that agreements can be reached with each of the owners through negotiation. However, it is now considered that the use of compulsory purchase powers is required in the event that the attempts to acquire by agreement fail. The approach of making a CPO in parallel with conducting negotiations to acquire the relevant interests by agreement is in accordance with the guidance at paragraph 24 of the Circular.
83. The extent of SRP to be the subject of the compulsory purchase order (“the CPO”) is shown shaded pink on the draft CPO Map contained in **Appendix 4**, which will accompany the CPO (“the Order Land”).

Preliminary Steps Taken

84. Following the Cabinet Meeting of 1 December 2010, the following preliminary work has been undertaken:
- a. The Council has negotiated appropriate CPO indemnity provisions with the developer, Tesco, to ensure that the Council is fully indemnified for all costs arising from the proposed compulsory acquisition process, including the costs of acquiring the land, the compensation payable and the expenses incurred by the Council in appointing appropriate property and legal advisers in taking the CPO forward. This agreement will be completed imminently;
 - b. The Council instructed through its external legal advisers land referencing agents, Persona Associates, to obtain accurate information regarding the current land interests in the Order Land. Formal requests for information were served on those known to have an interest in the Order Land pursuant to Section 16 of the Local Government (Miscellaneous Provisions) Act 1976 in order to establish the exact nature of their interest in the property. These notices were served on 14 January 2011 and responses were required by 31 January 2011. All but one response has been received. This process along with Persona's site visit and title investigations have assisted in the production of an accurate schedule of the relevant interests to be acquired through the proposed CPO as contained in **Appendix 4**. Whilst this is an advanced draft, it is recommended that the Chief Executive, Executive Director of Commercial and Corporate Services or the Head of Law and Governance should be authorised to make minor amendments, modifications or deletions to the CPO schedule of interests and map, should this be necessary in light of any new information received after the date of the Cabinet meeting;
 - c. A draft CPO has been prepared, a copy of which is contained in **Appendix 4**.
 - d. A draft statement of reasons to accompany the proposed CPO has been prepared and is contained in **Appendix 5**. This should be read alongside this report.

Alternative Options

85. The alternative option in this case would be for Tesco to seek to progress the development without the support of the Council's CPO powers. However, there is no certainty that it would be able to secure the necessary interests in the Order Land to carry out the comprehensive redevelopment proposed and to acquire any third party interests that would otherwise impede the development proposals, thereby putting at risk the delivery of this significant economic and physical regeneration project.

86. It is considered that the use of Compulsory Purchase powers is necessary in the circumstances in order to achieve the required assembly of the remaining interests at SRP and in turn deliver the comprehensive redevelopment and regeneration of SRP. If the Scheme did not proceed, then the economic, social and environmental benefits set out in this report are very unlikely to be achieved.

Compliance with the Human Rights Act 1998

87. Section 6 of the Human Rights Act 1998 (“the HRA 1998”) prohibits public authorities such as the Council from acting in ways incompatible with the European Convention on Human Rights (“ECHR”). The potential use of compulsory purchase powers in this case will involve two ECHR rights:

- a. Article 1 of the First Protocol of the ECHR: the right to peaceful enjoyment of one’s possessions and the right not to be deprived of one’s possessions. This right can be interfered with in the public interest and subject to the conditions provided for by law. That interference is only justified if the fair balance of the factors (which comprises a proportionate interference) is in favour of the public interest against the private interests to be acquired;
- b. Article 6 of the ECHR: the right to a fair and public hearing by an impartial tribunal.

88. **Article 1:** the law requires that before a CPO is made, the Council must be satisfied that there is a compelling case in the public interest for a CPO, and that this public interest in the development scheme proceeding sufficiently outweighs the interference with the affected party’s human rights. As a consequence, Cabinet must be satisfied that the benefits of the Scheme, set out in **paragraphs 68-69** above justify the compulsory acquisition of the outstanding interests at SRP.

89. The ECHR requires a “fair balance” to be struck between the public interest in securing a development proposal and an individual or legal person’s human rights under Article 1 of the First Protocol. This means that any interference with these rights must be proportionate. It is considered that there is a compelling case in the public interest to justify the use of CPO powers to facilitate the comprehensive redevelopment of SRP in the light of the substantial economic, social and environmental benefits that would arise from this redevelopment. In weighing these issues, the Council will also need to consider that parties whose interests are acquired are entitled to receive compensation for the losses they incur, calculated under the CPO compensation code, itself held to be compliant with Article 1.

90. The use of CPO powers in this instance is therefore considered to be proportionate.

91. **Article 6:** this confers on those whose civil rights are affected the right to a hearing before an independent and impartial tribunal. This is provided since any affected party is entitled to object to the CPO in which case the Secretary of State will hold a public inquiry to consider whether the CPO should be confirmed and such a decision would then be open to review before the High Court. The right to a fair hearing is therefore fully met as has been established before the Courts. Moreover, those directly affected by the CPO will be entitled to compensation proportionate to any losses that they have incurred as a result of the acquisition. Compensation will be payable in accordance with the Compulsory Purchase Code, assessed on the basis of market value of the property interest acquired, disturbance and statutory loss payment. The assessment of that compensation can be referred to the independent decision of the Lands Tribunal (the Lands Chamber of the Upper Tribunal). The reasonable surveying and legal fees incurred by those affected will also be paid by the Council. The CPO compensation code has also been held compliant with Article 6.

The CPO Process

92. A summary of the process involved in securing a confirmed CPO and transfer of title to the Council thereafter is included at **Appendix 12**.
93. The draft CPO schedule at **Appendix 4** will potentially be amended if further or new information is obtained regarding land interests. The schedule will be finalised at the time the CPO is made. Similarly the Statement of Reasons will be finalised at the same time. The CPO and Notice of Making the CPO will be served on all land interests identified and noted in the CPO schedule.

Financial Implications to the Council

94. As explained above, the Council has agreed appropriate indemnity arrangements with the Scheme Developer, Tesco in respect of all costs, liabilities and expenses arising from the CPO process including the costs of acquiring the relevant interests at SRP and for all compensation payable pursuant to the CPO. The objective of these indemnity arrangements is to ensure that the CPO process is cost neutral to the Council.

CONCLUSION

95. Section 226(1)(a) of the 1990 Act gives local authorities the power to acquire land compulsorily in order to facilitate the assembly of a site for private sector development.
96. The development at SRP for which planning permission has been granted is expected to contribute to the achievement of the promotion and improvement of the economic, social and environmental well-being of Sunderland, as required under s.226(1A) of the 1990 Act.

97. In addition, in the light of the substantial physical, social and economic benefits that would arise from the proposed development at SRP, it is considered that there is a compelling case in the public interest to justify the use of CPO powers in order to facilitate the development.
98. As described above, planning permission has already been granted for the Scheme (ref: 08/03336/OUT) and the proposals are in accordance with the national and regional planning policy, the Unitary Development Plan and the emerging Core Strategy.
99. Alternative proposals would not achieve the regenerative benefits required.
100. Negotiations have been attempted with the owners and occupiers of the land needed to be acquired but it has not proved possible to date to reach a concluded agreement. It is proposed to continue negotiations in tandem with the exercise of CPO powers in accordance with the Circular.
101. Finally, without the CPO and the Scheme, it is likely that SRP would continue to fail and that economic, social and environmental conditions in the area would worsen.

APPENDICES

Appendix 1	Background papers/documents
Appendix 2	SRP site plan
Appendix 3	Scheme layout drawing
Appendix 4	Draft CPO, Schedule of interests and Order Map
Appendix 5	Draft Statement of Reasons
Appendix 6	Plan showing the Scheme overlaid onto the properties to be acquired
Appendix 7	Report to the Cabinet on 1 December 2010
Appendix 8	Report to the Planning and Highways Committee on 5 October 2010
Appendix 9	Outline planning permission for the Scheme
Appendix 10	Stopping up Order
Appendix 11	Summary justifications for acquisitions
Appendix 12	Summary of CPO process and procedure

APPENDIX 1: Background papers (not appended)

In addition to the appendices, the following materials have been used to inform this report:

- 1) Design and Access Statement for Sunderland Retail Park dated June 2010 prepared by DPP LLP.
- 2) Retail Assessment dated 24 June 2010 prepared by DPP LLP.
- 3) Planning Statement dated June 2010 prepared by DPP LLP.
- 4) Review of Applicant's Retail Assessment dated September 2010 prepared by RTP.
- 5) City of Sunderland UDP adopted plan 1998.
- 6) City of Sunderland UDP alteration No.2 (Central Sunderland) adopted September 2007.
- 7) Sunderland UDP Sunderland Economic Masterplan adopted September 2010.
- 8) City of Sunderland Core Strategy draft revised preferred options (March 2010).
- 9) The Sunderland Strategy 2008 - 2025.
- 10) Sunderland City Council - Sunderland Retail Needs Assessment September 2009.
- 11) OPDM Circular 06/2004 "Compulsory Purchase and the Crichel Down Rules".

