

CABINET

7 DECEMBER 2011

ACQUISITION OF LAND AT SUNDERLAND RETAIL PARK, NEWCASTLE ROAD FOR PLANNING PURPOSES

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

Purpose of Report

The purpose of this addendum report is to inform Cabinet of the representations that have been received from Farmfoods Ltd ("Farmfoods") in relation to the proposed use of the Council's power under Section 237 of the Town and Country Planning Act 1990 ("the Act") in respect of the redevelopment of Sunderland Retail Park ("SRP").

A copy of Farmfood's letter to the Council dated 6th December 2011 is attached to this report.

Representations from Farmfoods

Farmfoods have raised five points in their letter dated 6th December 2011. Each point is set out below together with the response of Officers.

- (1) The stated reason for wishing to go down the Section 237 route that Tesco wish to start work in January is only a valid reason if no allowance is made for a Judicial Review of the decision. While the Council may hold the view that this is unlikely to arise, it is presumptuous to assume it won't.

Response

It is considered that the proposed use of the Council's power under Section 237 in this case is both lawful and in the public interest for the detailed reasons set out in the main report. There is no legal requirement to wait until the judicial review period has expired before commencing the construction or the use of the development. The proposed decision could only be challenged by way of judicial review on limited grounds and officers do not consider that any such grounds exist. This would require an application to be made to the High Court for permission to apply for judicial review and this must be made

promptly and within 3 months of the decision. A decision on when to commence the development will be taken by Tesco rather than the Council. Notwithstanding this challenge period, Tesco has stated that it intends to start on site at SRP early in the New Year.

- (2) The other possible advantage to Tesco in choosing the Section 237 route, as stated to me by G L Hearn (Tesco's agents), is that the compensation is likely to be lower than under the Section 226 (CPO) option. In view of the uncertainty associated with the timing of the Section 237 route, this is possibly, and arguably probably, the main reason for choosing the Section 237 route at this stage.

Response

As explained in the main report, the Section 237 power would allow certain rights and interests enjoyed by Blockbuster and Farmfoods in relation to the SRP site to be overridden to enable the redevelopment scheme to proceed. Compensation would be payable to Farmfoods on a statutory basis for losses that are incurred due to the interference with these rights and interests.

The Section 237 power does not authorise the acquisition of the Blockbuster/ Farmfoods unit and does not enable the recladding works to be carried out to the unit or the full interference with car parking rights which form part of the comprehensive redevelopment scheme. Therefore, if an agreement cannot be reached between Tesco and Farmfoods regarding variations to the existing lease, the CPO may still need to be implemented to acquire the unit and allow the scheme to be implemented in its entirety. Farmfoods would be entitled to further compensation in this event in accordance with the CPO Compensation Code.

- (3) Why did the Council put Farmfoods through the time and expense of a Section 226 Compulsory Purchase Order if it was their intention to choose the Section 237 route? This implies to me that either the Section 226 route as chosen was a disproportionate use of public power or else there is a belief on the Council's part that Section 237 does not actually empower them to acquire the rights they need.

Response

A Compulsory Purchase Order was required to acquire the outstanding interests at SRP in order to facilitate the carrying out of the comprehensive redevelopment scheme. In parallel with the CPO process, Tesco continued to negotiate with the remaining tenants. Tesco has now reached agreement with Netto and McDonalds in respect of their units. However, to date Tesco has been unable to conclude agreements with Blockbuster and Farmfoods. As explained in the main report, the CPO is still required in order to secure the comprehensive redevelopment of SRP. However, the Section 237

power enables significant elements of the scheme to proceed as quickly as possible and in advance of the implementation of the CPO which can take approximately 3 to 4 months.

- (4) I have taken legal advice and do not believe that Section 237 power would empower the Council to acquire the rights which they need at this time.

Response

As explained in the main report, the Section 237 power does not involve the acquisition of rights but enables certain third party rights and interests to be overridden to allow the carrying out of development in accordance with a planning permission. It is considered that the Section 237 power can be used in this case to enable the proposed redevelopment scheme for SRP to be constructed and used notwithstanding that it will interfere with the rights described in the main report. This will allow the scheme to proceed as quickly as possible in the public interest.

- (5) I suspect the Council is seeking to abuse its power to reduce the compensation that may become payable to Tesco and I think all dealings between Tesco and the Council should be disclosed, including the Vaux Brewery purchase.

Response

As set out above, the main report explains why the proposed use of the Section 237 power is considered to be lawful and in the public interest. In addition, the Inspector appointed by the Secretary of State in relation to the CPO found in her report that the Council had acted properly in pursuing the CPO for SRP and had provided a compelling case as to the need for regeneration of SRP and the strong public benefits of the redevelopment scheme to the City. Accordingly, the case for the regeneration of SRP stands on its own merits.

The appropriate level of compensation will be payable to Farmfoods in respect of the use of the Section 237 power and the acquisition of its leasehold interest through the implementation of the CPO. In relation to the request for information contained in the letter, this will be considered in accordance with the provisions of the Freedom of Information legislation.