



CPO Report to the Secretary of State for Communities and Local Government

by Susan Heywood BSc(Hons) MCD MRTPI

an Inspector appointed by the Secretary of State for Communities and Local Government

Date 2 November 2011

THE TOWN AND COUNTRY PLANNING ACT 1990

ACQUISITION OF LAND ACT 1981

**THE COUNCIL OF THE CITY OF SUNDERLAND
(SUNDERLAND RETAIL PARK)
COMPULSORY PURCHASE ORDER 2011**

Inquiry held on 4 October 2011
Inspections were carried out on 3 and 4 October 2011.
Sunderland Retail Park, Sunderland

File Ref: LDN023/J4525/006/0001

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- The Compulsory Purchase Order was made under section 226(1)(a) of the Town and Country Planning Act 1990 and the Acquisition of Land Act 1981 by The Council of the City of Sunderland on 24 February 2011.
- The purposes of the Order are for the development, redevelopment or improvement of land for the purposes of providing a new retail food store, additional retail units and making improvements to existing retail units, associated public realm and highway infrastructure.
- When the inquiry opened there were 3 remaining objections. 1 objection was withdrawn prior to the inquiry and 1 withdrawn before the inquiry closed. 2 objections therefore remain.

Summary of Recommendation: The Order be confirmed.

Procedural Matters and Statutory Formalities

1. At the inquiry it was confirmed that all statutory formalities had been complied with. The inquiry sat on 4 October. I carried out unaccompanied site visits on 3 and 4 October.
2. The original Order included 3 retail units and surrounding land. The Occupiers of those units were McDonalds (unit identified as 1 on the original Order Map, Document 9), Blockbuster and Farmfoods (unit identified as 2 on the original Order Map) and Netto (unit identified as 3 on the original Order Map). The objection from Netto was withdrawn prior to the inquiry and that from McDonalds at the inquiry. In view of the withdrawal of these objections, the Acquiring Authority (the Council) requested that the Order be amended to include only the remaining objectors' interests (Blockbuster and Farmfoods) and that the Order Map be revised to include only unit 2. Updated versions of the Schedule and Order Map were submitted. [Document 3]
3. Outline planning permission for the redevelopment of the retail park was granted in 2010 and reserved matters approval granted in May 2011. [CDs 4.1 and 4.2] The redevelopment scheme involves the erection of a Tesco superstore and 4 new retail units, together with the re-cladding of two existing units, including the Blockbuster and Farmfoods unit.

The Order Lands and Surroundings

4. The land is located within the Sunderland Retail Park. The remaining unit which is included within the CPO (unit identified as 2 on the Order Map) sits in a central position within the retail park. It is a single unit, sub-divided into two stores, occupied by Blockbuster and Farmfoods. The retail park comprises former retail units, a former nightclub and bowling alley, a former car showroom, a fast food unit and surface car park. Newcastle Road forms the western boundary of the retail park and the Stadium of Light Metro station is located to the north.

The Case for the Council [Acquiring Authority]

5. The main points are:

Regeneration

6. The site occupies a gateway position on the approach to the city centre from the north. It is a failing retail park with only three units still trading. It has a

generally run down and poor appearance. The retail park is surrounded by densely populated residential areas which have some of the highest unemployment figures within Sunderland. [CD4.4] The need for employment generating development in the area is identified in The Economic Masterplan [CD2.7] and The North East Regional Economic Strategy 2006-2016 [CD2.8].

7. The number of full and part-time jobs created by the superstore alone is estimated to be 400, excluding construction jobs. This will result in a net gain of 200 jobs (after displacement). The developers have entered into a planning obligation [CD4.3] to secure a number of employment and training measures for local people to enable them to benefit from the employment generation on the site. [Documents 12 and 13]

Quantitative & Qualitative Need

8. The retail park benefits from planning permission for comprehensive redevelopment. This has been the subject of widespread public consultation and discussion, following which the proposals were amended to reduce the size of the superstore, in line with planning policies to protect existing town centres. The Sunderland Retail Needs Assessment [CD2.5] identified a local deficiency in convenience goods provision in the Sunderland North area, together with a qualitative need for additional food and grocery provision. There is currently a significant 'leakage' of convenience expenditure to the Asda store in Boldon Colliery, in South Tyneside and a need to claw back this expenditure out of the City. [Document 12]

Compliance with Policy

9. The redevelopment scheme complies with relevant policies in the North East Spatial Strategy, July 2008 (RS) [CD2.1] and the relevant saved policies in the Sunderland Unitary Development Plan (UDP) [CD2.2]. It also complies with the emerging Local Development Framework (LDF) Core Strategy (CS) [CD2.3]. Topic Papers and retail studies carried out as background documents for the LDF highlight the need for convenience retail in this area and the leakage of expenditure out of the City. [CDs 2.4 and 2.5] The Sunderland Retail Needs Assessment [CD2.5] acknowledges that the proposed development would meet the localised need. [Document 12]
10. The scheme complies with relevant national planning policy. Although an out-of-centre site, it is in an accessible location, well served by bus routes and the Metro. It therefore complies with the principles of sustainable development in Planning Policy Statement 1: *Delivering Sustainable Development* (PPS1) and Planning Policy Guidance Note 13: *Transport* (PPG13). [Document 12]
11. Whilst there is a sequentially preferable site at Holmeside in the city centre, this site does not meet the localised quantitative and qualitative need for additional convenience provision. Furthermore, in order to be accommodated on the Holmeside site, the store would have to be substantially reduced in size, to the point where it would not compete with other large stores in the catchment area and would not claw back the currently 'leaked' expenditure. [Document 12]
12. There is sufficient expenditure within the catchment area to support the scheme proposals. Whilst the proposals would divert trade from other centres, this is not 'significant' for the purposes of PPS4. There is no clear evidence that the scheme

proposals would have an adverse impact on town centre vitality and viability and in-centre trade. The proposals therefore comply with the sequential and impact tests for retail development set out in Planning Policy Statement 4: *Planning for Sustainable Economic Growth* (PPS4). [CD2.9] [Document 12]

Environmental Matters

13. As noted above, the retail park is currently run-down and unattractive. The proposal for which planning permission has been granted will lead to a comprehensive redevelopment. It will provide new, high quality, well designed buildings and enhanced landscaping, creating an attractive environment. [Plans at CD4.5]
14. The Blockbuster / Farmfoods unit occupies a prominent location in the centre of the retail park. It currently has a dated appearance. The scheme intends the refurbishment of this unit with new external cladding and modification to its design to bring it in line with the remainder of the units in the proposed scheme. The exclusion of this unit from the scheme proposals would jeopardise the comprehensive nature of the proposed redevelopment. [Document 12]
15. The superstore will incorporate sustainable design features to promote energy efficiency. Highway improvements are proposed, for which a Stopping Up Order has been made and a S.278 Agreement completed. A new pedestrian walkway from the Metro station direct to the retail park will also be provided. [Document 12]

Other Factors

16. The site is currently owned by Tesco Stores Ltd although they do not currently occupy the site. Tesco is committed to the development and has so far invested some £35m in assembling the site. Apart from the 2 remaining objectors to the CPO, there are no impediments to the delivery of the scheme. Subject to confirmation of the CPO, Tesco would aim to commence works on site in 2012 and be trading in 2013. [Appendix A, Document 15]
17. Tesco and the Council have been reasonable in their negotiation with tenants of the premises and those negotiations have been successfully concluded with most of the occupiers.

The Objection to the CPO by Farmfoods Ltd [Document 20]

18. Notwithstanding the Statement of Reasons, no offers had been made to Farmfoods other than offers made in 2008 and 2009, which had been withdrawn. Those previous offers involved Farmfoods moving to an alternative unit on favourable terms. Farmfoods would fare better against the large Tesco superstore if they were in a larger unit. Subsequent offers to relocate to an alternative unit were on inferior terms. The negotiations were therefore unfair and statements made in the Statement of Reasons were misleading. Questions are also raised in relation to links with another site (the Vaux Brewery Site) previously within the ownership of Tesco and subsequently sold to the Council.
19. The regeneration benefits of the redevelopment are not disputed. It is contended that there is no need for the CPO to include Farmfoods as the redevelopment and re-cladding of the building could be done under the terms of the existing lease.

20. Objections were put forward in relation to the loss of parking spaces in the redevelopment scheme. It is recognised that the impact of this would not be as significant as first thought, but there remains a concern in relation to collection of trolleys.

Objection to the CPO by Blockbuster Entertainment Ltd [Document 19]

21. The re-cladding of the unit is not necessary for the redevelopment scheme to go ahead and it is contended that Tesco has no intention to re-clad. In any event, powers exist under S.237 to the Town and Country Planning Act 1990 to alter the existing rights without the need for a CPO.
22. Original objections in relation to the loss of parking have been allayed to an extent, although difficulties may still arise on match-days given the proximity of the site to the Stadium of Light. Concerns remain in relation to the more awkward access and parking arrangements. It ought to be possible to redesign the scheme to avoid the CPO. Questions are raised over the links with the Vaux Brewery site.

Response by the Council

23. In relation to Farmfoods, an offer had been made prior to the making of the Order, but this didn't include specific figures in terms of compensation. In any case, Circular 06/2004 *Compulsory Purchase and the Crichel Down Rules* (Circular 06/04) advises that negotiations should be progressed together with a CPO. Earlier offers made to relocate Farmfoods to a different unit were in the context of a different scheme. There is no need to relocate Farmfoods or Blockbuster in the current scheme. An offer to relocate to a different unit has been made on market terms. [Documents 15 and 18]
24. The re-cladding is necessary and important to the scheme. Tesco intend to carry it out and the planning permission requires it to be done. Under the existing lease, there is no right to re-clad the premises. The re-cladding works and work to the car park surrounding the premises could be claimed to cause a breach of the lease, due to the impact on the tenants' quiet enjoyment of their premises. In these circumstances, the objectors could seek an injunction to obstruct or delay the development. S.237 would not be appropriate in this instance as the re-cladding would not involve the overriding of rights under S.237 but the creation of rights to alter the terms of the lease. In the absence of agreement between the parties, the only route which will secure the comprehensive redevelopment of the site is through a CPO. [Documents 14 and 18]
25. All shoppers using Farmfoods and Blockbuster will be able to use the main car park. This was the basis of the Transport Assessment (TA) submitted with the planning application [Document 6] and the Council would expect Condition 16 (viii) of the outline permission (requiring the submission of a car parking management plan) to accord with the TA. The situation on match-days would be no worse than currently exists. There are good public transport links and coach drop off facilities at the stadium. It would be possible to introduce a time limited system on match-days if necessary, but there is no intention to introduce charging. The situation regarding trolleys and the car park configuration are planning matters not a matter for the CPO. The highway authority would have concerns with additional access off the main route through the site. [Document 14 and evidence to inquiry]

26. The negotiations for the Vaux Brewery Site have no bearing on the CPO in this case. [Document 13]

Conclusions

In this section the numbers in square brackets refer to paragraphs in the preceding section.

27. Much of the evidence put forward by the Council as Acquiring Authority is unchallenged by either objector.
28. A convincing case has been made for the need for regeneration of the site. There is no doubt that the scheme would be beneficial in terms of job creation and the S.106 agreement seeks to ensure that the local community would benefit from the scheme in terms of training and recruitment. The retail park is currently run down and unattractive and the redevelopment would significantly improve the appearance and vitality of the park. Improved landscaping and pedestrian links with the Metro station to the north would also be beneficial. Having regard to these factors, I am satisfied that the scheme would contribute to the improvement of the economic, social and environmental well-being of the area and no objector has sought to demonstrate otherwise. [6, 7, 13, 15]
29. In order to create a unified appearance across the park the re-cladding of the existing retail unit is an important element of the scheme, given the prominent location of that unit and its dated appearance. The planning permission requires the development to be carried out in accordance with the approved details, which includes the cladding of the central retail unit. Although no timescale was given for the re-cladding to take place, the Council are satisfied that conditions could be enforced if not complied with. I see no reason to doubt this view. The unit is in a central location to the side of the Tesco store on entering the site. It would be in Tesco's own interests to ensure that this unit is of a design and standard that does not detract from the appearance of the site in general and their store in particular. [14]
30. Turning to the quantitative and qualitative need for the development. The Sunderland Retail Needs Assessment identifies a further need for convenience retailing in the north of the administrative area, in which area the retail park sits. The study identifies the current 'leakage' to other stores, particularly the Asda store at Boldon Colliery, outside the administrative boundary of Sunderland. This development would help to claw back the expenditure from outside the City. [8, 9]
31. Although outside the city centre, the site has good accessibility by bus and Metro. The development would comply with a number of regional and local policies designed to encourage sustainable economic development and suitably located retail development. The evidence demonstrates that there is no sequentially preferable site for a development of this size, which would meet the objectives of additional convenience provision in this area and which would be of sufficient size to claw back the 'leaked' expenditure. The Retail Assessment carried out as part of the consideration of the planning application indicates that any impacts on existing centres would not be 'significant' in terms of PPS4 and the benefits of the scheme would outweigh any disbenefits in this regard. The development would be supported by the advice in PPS4. I conclude that the development would fit in with the planning framework for the area. [10, 11, 12]

32. The car parking layout has been designed to the satisfaction of the highway authority. Car parking is provided for both Blockbuster and Farmfoods close to their retail premises, but the remainder of the car park would also be available to customers of those stores. A car park management plan is to be produced under a condition of the outline planning permission. Although the scheme involves the removal of a direct link to the front of the Blockbuster / Farmfoods unit from the main spine road, the replacement link will not be significantly longer or more tortuous for customers. The car park layout does not appear to be unduly restrictive or inconvenient for customers of either Blockbuster or Farmfoods. [20, 22]
33. There is no evidence to suggest that car parking on the site would be difficult on match-days. The Council indicated that parking / coach drop-off is available nearer to the stadium and public transport facilities are good. The car park management plan could include measures to discourage use of the car park during match-days. The management of shopping trolleys from Farmfoods' store is unlikely to be an insurmountable problem, particularly as the car park is not to be segregated. [20, 25]
34. Whilst Farmfoods may wish to be relocated to a larger store on more favourable terms than they have been offered, there is no evidence to suggest that they would not be able to operate from the existing store. Indeed it seems to me that they may well benefit from the general increase in vitality and consumer activity at the redeveloped park. [18, 23]
35. It is clear that the scheme is likely to be delivered if the CPO is confirmed. Planning permission has been granted for the scheme, a Stopping Up Order has been made and a S.278 Agreement has been completed. There is no dispute that the developer has a track record of this type of development, that a realistic programme of works has been set out, and that there would be no financial matters which may stand in the way of the redevelopment. [15, 16]
36. It is apparent from the evidence submitted, and the fact that there are only 2 remaining objectors, that the Council and their development partner have been reasonable in their approach to negotiations, as advised by Circular 06/04. Even if it were possible to undertake the works under the terms of the existing leases, or under S.237 of the Town & Country Planning Act, this could lead to a delay in the implementation of the comprehensive redevelopment of the site. In the absence of a negotiated solution I am therefore satisfied that the case has been made for the confirmation of the CPO. [17-19, 21]
37. The case for this CPO stands on its own merits. The Council indicate that there are no links between this site and the Vaux Brewery Site and no evidence was submitted to the contrary. [18, 22]

Conclusion

38. I find that the Order land is both suitable for and required in order to secure the carrying out of development, redevelopment or improvement. The scheme permitted is in accordance with the development plan and national advice and would secure economic, social and environmental improvements. There are no material considerations or objections which would outweigh the matters in support of the CPO and I conclude that there is a compelling case in the public

interest in favour of its confirmation. It would also be reasonable to amend the Order and Map as requested.

Human Rights

39. I heard no evidence that the human rights of any tenant would be affected by the CPO and I am satisfied that there would be no interference with such rights.

RECOMMENDATION

40. Subject to the requested amendment to the Order and Map noted in paragraph 2 above, I recommend that The Council of the City of Sunderland (Sunderland Retail Park) Compulsory Purchase Order 2011 be confirmed.

Susan Heywood

INSPECTOR

OTHER DOCUMENTS

- 19 Evidence and appendices of Mr Hughes for Blockbuster
- 20 Evidence and appendices of Mr McCreddie for Farmfoods

CORE DOCUMENTS

- CD1.2 Statement of Reasons
- CD1.3 Statement of Case
- CD1.4 Notice of Making of Order
- CD1.5 The Stopping Up of Highways (North East) (No.3) Order 2011

- CD2.1 North East Spatial Strategy, July 2008
- CD2.2 Sunderland Unitary Development Plan 1998, as revised by Alteration No 2 to the UDP adopted 2007 (Saved Policies)
- CD2.3 Sunderland Core Strategy Preferred Options, March 2010
- CD2.4 LDF Topic Papers on Retailing and Town Centres, September 2009
- CD2.5 Sunderland Retail Needs Assessment, Roger Tym and Partners, September 2009
- CD2.6 Sunderland Central Urban Design Strategy, July 2008 (SPD)
- CD2.7 Sunderland Economic Masterplan, September 2010
- CD2.8 North East Regional Economic Strategy 2006-2016 (Leading the Way)
- CD2.9 Redevelopment of the Sunderland Retail Park: Review of Applicant's Retail Assessment, Roger Tym & Partners, September 2010

- CD3.1 Planning Policy Statement 1 Creating Sustainable Communities (PPS1)
- CD3.2 Planning Policy Statement 4 Planning for Sustainable Economic Growth (PPS4)
- CD3.3 Planning Policy Statement 5 Planning for the Historic Environment (PPS5)
- CD3.4 Planning Policy Guidance 13 Transport (PPG13)
- CD3.5 Planning Policy Statement 22 Renewable Energy (PPS22)
- CD3.6 Planning Policy Statement 23 Planning and Pollution Control (PPS23)
- CD3.7 Planning Policy Guidance 24 Planning and Noise (PPG24)
- CD3.8 Planning Policy Statement 25 Development and Flood Risk (PPS25)

- CD4.1 Outline planning permission reference 08/0336/OUT
- CD4.2 Approval of Reserved Matters reference 11/00560/REM
- CD4.3 5.106 Agreement dated 27 October 2010
- CD4.4 Planning Statement, DPP, June 2010
- CD4.5 Bundles of approved plans, at A3 size and A1 size
- CD4.6 Completed agreement under S278 of the Highways Act 1980