

<p>CABINET MEETING – 1st DECEMBER 2010</p> <p>EXECUTIVE SUMMARY SHEET – PART I</p>
<p>Title of Report: Potential Use of Compulsory Purchase Powers: Land at Sunderland Retail Park, Newcastle Road.</p>
<p>Author(s): Report of the Deputy Chief Executive and the Head of Law & Governance.</p>
<p>Purpose of Report: This report seeks approval in principle to the use by the Council of its compulsory purchase powers for the acquisition of private land interests at Sunderland Retail Park to facilitate the carrying out of the comprehensive re-development of the site. The report also seeks approval to enter into appropriate indemnification arrangements with the developer in respect of the costs of the compulsory purchase process and to the appointment of appropriate professional advisers.</p>
<p>Description of Decision: Cabinet is recommended to:</p> <ol style="list-style-type: none"> i) Agree in principle to the potential use of Compulsory Purchase Order (CPO) powers under Section 226(1)(a) of the Town and Country Planning Act 1990 to acquire land and under Section 13 of the Local Government (Miscellaneous Provisions) Act 1976 to acquire new rights at Sunderland Retail Park to facilitate the carrying out of the comprehensive re-development of the site; ii) Agree that the Deputy Chief Executive and the Head of Law and Governance 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 Section 16 of the Local Government (Miscellaneous Provisions) Act 1976 on all potential owners of legal interests in the site; iii) Authorise the Deputy Chief Executive and the Head of Law Governance, in consultation with the portfolio holder, to agree and enter into appropriate indemnification arrangements with the developer in respect of the costs to the Council of the CPO process; iv) Authorise the Deputy Chief Executive to appoint suitable property and legal advisors in respect of the CPO process. v) Agree to receive a further report in due course in respect of the proposed making of the Compulsory Purchase Order once the land referencing exercise is complete and the draft Order with an accompanying statement of reasons have been prepared. vi)

Is the decision consistent with the Budget/Policy Framework?		Yes
If not, Council approval is required to change the Budget/Policy Framework		
Suggested reason(s) for Decision:		
<p>At this stage, it is considered that the proposed compulsory acquisition of land and interests at Sunderland Retail Park will facilitate the carrying out of the comprehensive re-development of the site. The proposed development represents substantial private investment in a currently run-down and unattractive site which is situated at an important gateway to the City. The re-development will secure the physical regeneration of the site and is likely to act as a catalyst for further private investment in the Monkwearmouth area. In addition, it is estimated that the development will generate some 400 new jobs on the site. As a consequence, 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 local area. In addition, in light of the substantial physical, social and economic benefits that would arise from the proposed re-development of Sunderland Retail Park, at this stage it is considered that there is a compelling case in the public interest to justify the use of CPO powers in order to facilitate this development. Planning Permission has been granted for major retail development on the site under Ref: 08/03336/OUT and the proposals are in accordance with national planning policy, the Unitary Development Plan and the emerging Core Strategy.</p>		
Alternative options to be considered and recommended to be rejected:		
<p>The alternative option would be for the developer to seek to progress the development without the support of the Council's CPO powers. However there is no certainty that the developer would be able to secure vacant possession of the site to carry out the comprehensive re-development and to acquire any third party interests that could potentially impede the development proposals, thereby putting at risk the delivery of this significant economic and physical regeneration project.</p>		
Is this a "Key Decision" as defined in the Constitution?	Relevant Scrutiny Committee:	
Yes	Prosperity and Economic Development	
Is it included in the Forward Plan?		
Yes		

POTENTIAL USE OF COMPULSORY PURCHASE POWERS: LAND AT SUNDERLAND RETAIL PARK, NEWCASTLE ROAD.

REPORT OF THE DEPUTY CHIEF EXECUTIVE AND THE HEAD OF LAW & GOVERNANCE

1.0 Purpose of the Report

- 1.1 This report seeks approval in principle to the use by the Council of its compulsory purchase powers for the acquisition of private land interests at Sunderland Retail Park to facilitate the carrying out of the comprehensive re-development of the site.
The report also seeks approval to enter into appropriate indemnification arrangements with the developer in respect of the costs of the compulsory purchase process and to the appointment of appropriate professional advisers.

2.0 Description of Decision

- 2.1 Cabinet is recommended to:
- i) Agree in principle to the potential use of Compulsory Purchase Order (CPO) powers under Section 226(1)(a) of the Town and Country Planning Act 1990 to acquire land and under Section 13 of the Local Government (Miscellaneous Provisions) Act 1976 to acquire new rights at Sunderland Retail Park to facilitate the comprehensive re-development of the site;
 - ii) Agree that the Deputy Chief Executive and the Head of Law and Governance 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 Section 16 of the Local Government (Miscellaneous Provisions) Act 1976 on all potential owners of legal interests in the site.
 - iii) Authorise the Deputy Chief Executive and the Head of Law Governance to agree and enter into appropriate indemnification arrangements with the developer in respect of the costs to the Council of the CPO process.
 - iv) Authorise the Deputy Chief Executive to appoint suitable property and legal advisors in respect of the CPO process.
 - v) Agree to receive a further report in due course in respect of the proposed making of the Compulsory Purchase Order once the land referencing exercise is complete and the draft Order with an accompanying statement of reasons have been prepared.

3.0 Background

3.1 At its meeting on 5th October 2010, the Council's Planning and Highways Committee resolved that it was minded to approve an outline planning application for major retail development at Sunderland Retail Park on behalf of Mountview Securities Investments Ltd, and to refer the planning application to Secretary of State under the terms of the Town and Country Planning (Shopping Development) (England and Wales) (No.2) Direction 1993.

3.2 The Secretary of State subsequently confirmed that he did not wish to call in the application for his own decision, and outline planning permission was subsequently granted by the Council as local planning authority on the 27th October 2010.

3.3 The applicant for planning permission, Mountview Securities Investments Ltd, indicated that the preferred operator for the superstore component of the development was Tesco Stores Ltd, and since the grant of the planning permission it has now been confirmed that Mountview's land interests in the site are to be transferred to Tesco who are to be the developer of the Sunderland Retail Park site and operator of the superstore.

4.0 Details of Proposed Development

4.1 Outline planning permission has been granted for the following comprehensive development at Sunderland Retail Park:

- the demolition of the majority of the existing buildings on the Retail Park site, including the Bowling Alley and the former Reg Vardy car showroom;
- the construction of a new food superstore of 16, 140 sq.m gross external area (GEA) and net retail sales area of 8,378 sq.m;
- the retention and recladding of an existing retail unit of 1,168 sq.m GEA and 934 sq.m net retail sales area;
- the erection of four additional retail units totalling 2,661 sq.m GEA and 2,129 sq.m net retail sales area;
- the retention and recladding of the existing Farmfoods/Blockbuster unit;
- 900 parking spaces to service the entire development;
- 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 highway.

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 Section 278 of the Highways Act 1980.

4.2 The developer is to apply to the Secretary of State for an order under Section 247 of the Town and Country Planning Act 1990 to stop-up a section of Wearmouth Street.

The development proposals referred to above will lead to the comprehensive re-development of this currently run-down and unattractive site which is situated at an important gateway to the City. The development will secure the physical regeneration of the site through private sector investment and generate some 400 new jobs on the site.

5.0 Use of Compulsory Purchase Powers

5.1 Section 226(1)(a) of the Town and Country Planning Act 1990 provides the Council with the power to acquire land compulsorily if it is considered that the acquisition will facilitate the carrying out of development, re-development or improvement on or in relation to the land. This CPO power can be used to assemble a site to facilitate either a public or private sector development. Before exercising this CPO power, the Council must be satisfied that the development proposal is likely to contribute to the achievement of one or more of the following objects, namely the promotion or improvement of the economic well-being of the Sunderland area; the promotion or improvement of the social well-being of the Sunderland area; or the promotion or improvement of the environmental well-being of the Sunderland area. In addition, Section 13 of the Local Government (Miscellaneous Provisions) Act 1976 also provides the Council with a power to acquire new rights over land which may be required in order to enable the implementation of the development, re-development or improvement.

5.2 The extent of the Sunderland Retail Park development site to be the subject of the potential CPO is shown edged red on the plan attached in the Schedule to this report. Although Mountview Securities Investments Ltd/Tesco Stores Ltd own the majority of the freehold interests in the site, there are a small but potentially significant number of parcels of land that are in unknown ownership together with a number of leasehold interests and third party rights that need to be acquired before the re-development scheme described in Section 4 can proceed. Whilst it is to be hoped that with regard to the leasehold interests, agreement to acquire can be reached through negotiation, the use of compulsory purchase powers may be 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 Government advice contained in the ODPM Circular 06/2004.

5.3 It should be noted that One North East, the Regional Development Agency, previously resolved in principle to use its CPO powers under the Regional Development Agencies Act 1998 to acquire the outstanding interests at the Sunderland Retail Park site in view of the economic and regeneration benefits that would arise from the development proposals. However, the Coalition Government has recently announced that all Regional Development Agencies are to be abolished by no later than March 2012 so it is no longer appropriate for One North East to exercise its own CPO powers to support the scheme. In the circumstances, in view of the substantial physical, social and economic benefits to the City that would arise from the proposed re-development of Sunderland Retail Park, it is now appropriate for the Council to consider the use of its CPO powers to facilitate the development proposals.

6 Next Steps

- 6.1 Should Members be minded to agree in principle to the potential use of the Council's CPO powers to facilitate the Sunderland Retail Park development, it will be necessary to undertake certain preliminary work to prepare for the potential CPO. Firstly, the Council must enter into an appropriate indemnity agreement with the developer Tesco Stores Ltd to ensure that the Council is fully indemnified for all costs arising from the potential compulsory acquisition process, including the costs of acquiring land and paying compensation, meeting any blight notices, any public inquiry and the expenses incurred by the Council in appointing appropriate property and legal advisors, in taking a potential CPO forward.
- 6.2 It will also be necessary for the Council to undertake a land referencing exercise so as to obtain accurate information regarding the current land interests. Formal requests for information will be served on the occupants and all other persons with an interest in the site so as to ensure that an accurate schedule of the relevant interests to be acquired through the proposed CPO is produced. Once the land referencing is complete, the exact CPO boundary can then be settled and agreed with the developer.
- 6.3 Further, it is proposed that the Council will appoint an external surveyor to advise on the negotiations for the acquisition of the relevant land interests and an external legal adviser to assist in the potential CPO process. As explained above, the costs incurred in appointing these consultants will be met by the developer under the terms of the indemnity agreement.
- 6.4 It is proposed to submit a further report to Cabinet in due course to seek authorisation for the proposed making of the CPO providing there remains a compelling case in the public interest to justify the use of CPO

powers and once the initial land referencing is complete, the exact CPO boundary has been confirmed and the schedule of interests to be acquired has been produced, the indemnity agreement is complete and a draft Order and the accompanying detailed statement of reasons have been prepared.

7.0 Reasons for decision

7.1 At this stage, it is considered that the proposed compulsory acquisition of land and interests at Sunderland Retail Park will facilitate the carrying out of the comprehensive re-development of the site. The development proposals are outlined in Section 4 above. This proposed development represents substantial private investment in a currently run-down and unattractive site situated at an important gateway to the City. The re-development will secure the physical regeneration of the site and is likely to act as a catalyst for further private investment in the Monkwearmouth area. In addition, it is estimated that the development will generate some 400 new jobs on the site. As a consequence, 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 local area. In addition, in light of the substantial physical, social and economic benefits that would arise from the proposed development at Sunderland Retail Park, at this stage it is considered that there is a compelling case in the public interest to justify the use of CPO powers in order to facilitate this development. Planning permission has been granted for major retail development on the site under Ref: 08/03336/OUT and the proposals are in accordance with national planning policy, the Unitary Development Plan and the emerging Core Strategy.

8.0 Alternative Options

8.1 The alternative option would be for the developer to seek to progress the development without the support of the Council's CPO powers. However there is no certainty that the developer would be able to secure vacant possession of the site to carry out the comprehensive re-development and to acquire any third party interests that could potentially impede the development proposals, thereby putting at risk the delivery of this significant economic and physical regeneration project.

9.0 Human Rights Act 1998

9.1 Section 6 of the Human Rights Act 1998 prohibits public authorities (including the Council) from acting in a way which is incompatible with the European Convention of Human Rights (ECHR). The potential use of compulsory purchase powers in this case will involve two ECHR rights - Article 1 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 except in the public interest and subject to the conditions provided for by

law) and Article 6 of the Convention (the right to a fair and public hearing by an impartial tribunal).

(i) 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, and that the public interest in the development scheme proceeding sufficiently outweighs the interference with the affected parties' human rights. As a consequence, before a CPO is made, the Council will need to be satisfied that the benefits the development scheme will bring justify the compulsory acquisition of the relevant interests. It is also incumbent on the Council to be satisfied that the use of CPO powers is proportionate i.e. that the redevelopment of the site and the envisaged benefits will not be achieved through a lesser intervention or through alternative means. In weighing these issues, the Council will 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, which is a code which has been held to be compliant with the Human Rights Act and the ECHR.

(ii) Article 6 - Should the Council make a CPO and an affected party objects to it, then the Secretary of State will hold a public inquiry to consider whether the CPO should be confirmed.

Those directly affected by the CPO will be entitled to compensation proportionate to any losses that those persons may incur 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 reasonable surveying and legal fees incurred by those affected will also be paid by the Council. The Compulsory Purchase Code has been held to be compliant with Article 1 of the First Protocol.

9.2 In summary, the European Convention 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. Any interference with these rights must be necessary and proportionate. As explained above, at this stage it is considered that there is a compelling case in the public interest to justify the use of CPO powers to facilitate the comprehensive re-development of Sunderland Retail Park in light of the substantial physical, social and economic benefits that would arise from this re-development. The potential use of CPO powers in this instance is considered at this stage to be proportionate and necessary. However, these matters will be considered in further detail before any future resolution is made authorising the making of a CPO.

10 Consultations

- 10.1** The Director of Financial Resources has been consulted and the comments are contained in the body of the report.

11 Background papers

- 11.1** Report to Planning and Highways committee, 5th October 2010.
Planning consent and Section 106 agreement, 27th October 2010.