

Agenda item:

[No.]

**CABINET 16 November 2010**

Report Title. New Football Stadium and Associated Development at Tottenham, Northumberland Park.

Report of Director of Urban Environment  
 Signed: *W.P. Bobb* . 4<sup>th</sup> Nov. 2010  
 Director of Urban Environment

Contact Officer : Mark Hopson, Physical Regeneration Manager, Planning & Regeneration

Wards(s) affected: Northumberland Park

Report for: **Key Decision**

**1. Purpose of the report**

1.1. The following report seeks authority from Members for the following:

To give an "in principle" approval for the Council to use its Compulsory Purchase Powers and powers under Section 237 of the Town and Country Planning Act 1990 ("Section 237") (if required) to facilitate Tottenham Hotspur Football Club (THFC) to progress the land assembly of Northumberland Park Development Site which, in turn, will enable THFC to implement the recently approved planning application and build its new football stadium in Tottenham along with supporting regeneration.

**2. Introduction by Cabinet Members**

2.1. Members will note that development proposals submitted by THFC were granted planning permission on 30<sup>th</sup> September 2010 for a comprehensive redevelopment scheme on the existing stadium site subject to a combined S106 & S278 agreement and referral to the Mayor of London and Secretary of State (SoS). The

redevelopment proposals include a new football stadium for THFC with increased spectator capacity, a food superstore, hotel and residential development as well as associated office and public space.

2.2. Critically, the development proposals present an opportunity for the Council's strategic regeneration goals to be realised in what is acknowledged and recognised as part of the Borough which suffers from endemic socio-economic deprivation and environmental degradation. A framework for the delivery of proposed regeneration initiatives and obligations is set out in the planning committee report and the provisionally agreed S106 agreement approved at the Planning Committee on 30 September 2010.

2.3. Members are asked to support the recommendations of this report and recognise the importance of preserving THFC's heritage and history in Tottenham. The socio-economic, cultural and community benefits of the new football stadium and associated development in Tottenham will not only bring much needed regeneration to the eastern part of the Borough but also promote the redevelopment of other key stadium sites across London. This, in turn, will lead to a net socio-economic and environmental benefit to London as a whole.

Cllr Mallett – Cabinet Member for Planning & Regeneration

**3. State link(s) with Council Plan Priorities and actions and /or other Strategies:**

3.1. *The expansion of THFC's stadium is a site specific proposal in the UDP, highlighted in the Council's Regeneration Strategy as such and is part of the commitment in the Sustainable Community Strategy 2007 – 2016 which aims to work with neighbouring boroughs and the Mayor of London to improve transport and bring employment opportunities and new homes to North Tottenham.*

3.2. *The THFC site is within the Tottenham High Road Regeneration Corridor and identified in the UDP as a major site for potential redevelopment to act as a catalyst for prime regeneration*

3.3. *The Councils Housing Strategy 2009 -2019 identifies three main goals – to improve housing services to residents across all tenures; to maximise the supply of affordable homes; achieving decent homes for all and contributing to an improving environment. The approved development proposals at THFC will contribute to all of these.*

3.4. *Emerging Core Strategy – Policy SP1 Managing Growth identifies Northumberland Park as an area of change which includes the Tottenham Hotspur Football Stadium as a potential development site. This policy recognises that the redevelopment of the stadium will provide opportunities which would result in regeneration benefits to the local community. Additionally, the proposed redevelopment of THFC will contribute to meeting the Boroughs Housing target as set out in SP2 Housing of the Core Strategy. Policy SP16 - Community Infrastructure sets out that the Council will work with partners to ensure that*

*appropriate improvement and enhancement of community facilities and services are provided for Haringey's residents.*

3.5. *The proposals were the subject of an equalities impact assessment which has also been considered in relation to this decision.*

#### **4. Recommendations**

4.1. That Cabinet agrees 'in principle' to use its Compulsory Purchase powers and "in principle" to acquire or appropriate the Site shown edged red on the draft plan in Appendix 2 for planning purposes pursuant to Sections 226 and/or 237 of the Town and Country Planning Act 1990 (as amended), to enable Tottenham Hotspur Football Club (THFC) to build its new football stadium in Tottenham along with associated development supporting regeneration.

4.2. That Cabinet agrees to authorise the Head of Legal Services and the Head of Corporate Property Services to issue requisitions for information pursuant to Section 16 of the Local Government Act (Miscellaneous Provisions) Act 1976 to all potential owners of legal interests affected by the Scheme.

4.3. To grant delegated authority to the Head of Legal Services and Head of Corporate Property Services to complete and settle the land referencing exercise with THFC to identify all owners, tenants, occupiers and others with a legal interest affected by the Scheme and which may be included in any future Compulsory Purchase Order or become eligible for compensation under Section 237.

4.4. To appoint the Head of Corporate Property Services as the authorised officer pursuant to S.15 of the Local Government (Miscellaneous Provisions) Act 1976.

4.5. That the above Resolutions are conditional upon:

- THFC using all their reasonable endeavours to assemble the development Site by agreement/private treaty by 31<sup>st</sup> March 2011; and
- In the event that THFC are unable to assemble the Site by agreement/private treaty by 31<sup>st</sup> March 2011, that a further report is presented to Cabinet seeking authority to make a full and unconditional CPO for the Site and to acquire or appropriate the site for planning purposes so as to trigger the provisions of Section 237.

4.6 That Cabinet will not consider a request to authorise a full unconditional CPO or use its appropriation powers under section 237 for the Site unless the following pre-conditions are met by THFC:

a) THFC unequivocally states that it is staying in Tottenham and intends to operate from the new stadium and is not pursuing any interest in moving to a stadium or

site elsewhere and will not do so prior to their occupation and use of the new stadium;

- b) The Council being satisfied that there is a legally binding delivery mechanism (a S106 Agreement) with THFC which ensures that there is a comprehensive redevelopment of the whole Site and that the new football stadium will be built on the Site and completed within a reasonable time period of any other development on the site such as the supermarket being occupied or opened for business.
- c) The Council being satisfied that THFC has a viable business plan and funding strategy, together with a full and sufficient indemnity agreement and appropriate financial bond covering the costs of making and confirming any such CPO/section 237 appropriation.
- d) That an Equalities Impact Assessment (EqIA) is undertaken of the potential impact of the proposed Compulsory Purchase Order.
- e) That the Council is satisfied that it is not providing an illegal indirect subsidy or State Aid to THFC in the use of the CPO powers or S.237 land appropriation powers.

## **5. Reasons for recommendations**

- 1. To enable THFC to stay within the Borough
- 2. To enable a comprehensive development and regeneration of the whole of the Northumberland Park Development Site to be achieved.
- 3. To enable London as a whole to benefit from the regeneration of a number a strategic sites within the Borough and other London Boroughs.
- 4. To maximize the benefits to the community and businesses within London as a whole and within the local area.
- 5. To allow THFC to assemble the site by agreement and as a last resort by the Council to facilitate the development by the use of Compulsory Purchase and S.237 powers.

## **6. Other options considered**

- 6.1 **Not to support THFC** in land assembly by use of CPO and S.237 powers. The proposed decision enables the THFC to assemble the site by agreement by 31<sup>st</sup> March 2011. So far, THFC have had difficulties in assembling the site which has blighted the local area and caused decay of the built environment around the existing stadium. If the Council decides not to support THFC in the land assembly process and the development of this area, the regeneration of this area may not be realised and properties along the High Road will continue to be an environmental eyesore for a longer period.

## **6.2 Other Agencies who have Compulsory Purchase and S.237 Powers.**

Although the Council have these powers, there are also other Government agencies which have these powers. For example, the London Development Agency has undertaken similar land assembly projects throughout London. Unfortunately due to the comprehensive spending review, the public sector financial climate and the current consolidation of agencies for financial and efficiency reasons, the London Borough of Haringey is best placed to use these powers, particularly as the site is of strategic importance and in the locality of the Council. In addition, THFC have agreed "in principle" to fully indemnify the Council for all the costs associated with the use of these powers.

## **7. Report**

### **7.1 Background**

On the 30<sup>th</sup> September 2010 THFC were given outline planning consent for the comprehensive redevelopment of their existing stadium and adjacent land. Broadly, the Northumberland Park Development proposals include the a new supermarket and associated parking, a replacement football stadium with an increased spectator capacity of 56,250 seats, a new podium, hotel, offices and residential housing along with associated public space.

At present THFC own and control approximately 85% of the land required for their overall development proposals. Of the remaining land there are still a number of interests that will need to be acquired in order to facilitate the overall stadium and supporting regeneration development.

The Council owns various landholdings (e.g. strips of highway, land, school and housing units) within the areas which are affected by the THFC scheme both in terms of land assembly and Rights of Light. The Council, as landowner, has retained external property advisors and valuers: District Valuer (a Government Agency which is part of the Inland Revenue's Valuation Office Agency) and Drivers Jonas Deloitte (Chartered Surveyors) to advise the Council as landowner separately. Reports will be presented to the Council's Cabinet on these matters in due course.

### **7.2 Compulsory Purchase**

Section 226 of the Town and Country Planning Act (as amended) enables the Council to acquire land compulsorily for "planning purposes". Section 226(1)(a) allows these powers to be used if acquiring the land will facilitate the carrying out of the development, redevelopment or improvement on or in relation to the land being acquired and it is not certain that the necessary land can be acquired through agreement. This is a wide power and it is subject to sub section (1A) of Section 226 which provides that an acquiring authority must not exercise this power unless it thinks the proposed development, redevelopment or

improvement is likely to contribute to achieving the promotion or improvement of the economic, social or environmental well-being of the area.

Further details of the Compulsory Purchase process and powers will be presented to Cabinet should the Council decide to proceed with an "in principle" decision and if a full CPO resolution is required.

### **7.3 Compulsory Purchase "in principle" decision**

At this stage THFC are seeking an "in principle" resolution indicating that the Council will support the scheme by compulsory purchase and use of S.237 land appropriation powers, if necessary. There have been similar resolutions passed for developments elsewhere in the Borough with the Council being indemnified against the costs of CPO acquisition, claims of blight and statutory compensations as well as inquiry costs if the CPO is contested.

Compulsory purchase is a course of last resort, and THFC will be using all reasonable endeavours to agree terms with interested parties by voluntary means. It is in their interest to do so and is also in accordance with Government advice in ODPM Circular 06/2004. This also recommends the use of alternative dispute resolution techniques including mediation and arbitration wherever appropriate. The Urban Task Force reported in 1999 on the decline of cities and in recommending a series of measures in their report "Towards an Urban Renaissance" specifically included that local authorities should use statutory powers to assist the private sector to bring forward proposals which are desirable in their areas. The Stadium expansion proposal is an important site specific proposal and regeneration opportunity for the Borough

### **7.4 Rights of Light**

The height of the proposed stadium and housing development may impinge on the daylight of some properties. The extent of this impact is still being assessed by THFC and the Council's advisors. Under the Prescription Act 1832 rights of light may arise after 20 years uninterrupted use of daylight through windows and this can be a problem in the construction of high buildings. It is a specialist issue for surveyors and lawyers

Rights of light issues will not arise where there is a consent or agreement in writing by virtue of which the light was enjoyed but the landowner is compensated for its loss. In the absence of agreement the issue can be resolved by the use of S.237 land appropriation powers when the works have the benefit of planning permission. THFC are therefore seeking the Council's "in principle" decision to use these powers if they are unable to reach agreement.

THFC have agreed "in principle" to indemnify the Council in respect of any rights of lights claims, and this is included in the proposed indemnity agreement.

A further report on Rights of Light will be presented to Cabinet in due course.

#### **7.5 Oversailing rights**

This is the right for construction cranes to use air space above properties. So far as public highways are concerned there are statutory powers in the Highways Act 1980. The proposed scheme of development by THFC is a very substantial construction project and if special oversailing rights need to be considered THFC will report on this in good time for them to be included in the proposed CPO.

#### **7.6 Efforts to acquire to date**

The Council is taking into account Government Circular, 6/2004 'Compulsory Purchase and the Crichel Down Rules' in considering whether or not a CPO may be required.

Government guidance is that CPO powers should only be exercised where there is a compelling case in the public interest.

Compulsory acquisition is usually a last resort, as the preference is to acquire by way of agreement wherever practicable. Despite the ongoing negotiations with third parties it is anticipated that THFC will not be able to secure all the interests within the timescale needed for delivery of the scheme. THFC have agreed to use their best endeavours to reach agreement with landowners before they call upon the Council to use their CPO powers.

It is clearly in everyones interests that agreements can be reached rather than the use of compulsory powers. However, if the Council are prepared to use their compulsory purchase and Section 237 powers as a last resort then it is appropriate to make that clear in public so that all parties know the context in which they are negotiating. That is the primary purpose of the "in principle" decision.

#### **7.7 Financial issues and risk to the Council in making a CPO**

A stage 1 indemnity agreement has been prepared subject to Cabinet's decision. This will provide full financial protection for the Council in respect of the resources devoted to making the "in principle" decision, and its exercise of its compulsory purchase and other powers subject to the conditions outlined in the recommendations to this report. The draft indemnity agreement sets out the basis on which the CPO will be promoted, if Cabinet agrees to this, and makes it clear that although the Council will conduct the CPO all costs fall to be paid by the Developer (THFC). The draft agreement ensures that the Council's costs in connection with the "in principle" decision (if this is decided) and the promotion, making, and confirmation of the CPO and S.237 and compensation costs are met in full by THFC.

The CPO project will be lead by and managed by the Council's Project Manager in the Planning & Regeneration Service, in consultation with the Head of Corporate Property Services, Head of Legal Services and Head of Finance. A joint project team has also been set up with THFC professional advisors.

Officers will be assuring the Council that the arrangements outlined below mean that there is no material financial exposure for the Council and that the indemnity agreement is comprehensive.

There are potential liabilities if, for example, the agreed levels of compensation are inadequate. However, this is believed to be an acceptable risk and is covered by requiring THFC, through the indemnity agreement, to pay a specified margin above the estimated costs on their deposit, and also to fully indemnify the Council should the compensation that is awarded by the Land Tribunal is greater than the amount deposited with the Council.

THFC's intention and strategy is to acquire as many, if not all, the interests they require to implement the Scheme, by agreement, without the need to call upon the Council's CPO powers, which they and the Council see as a last resort. They have employed professional property advisors to advise them on the CPO process and compensation issues. Under the terms of the proposed indemnity agreement, THFC have agreed for these professional advisors to provide technical support to the Council to assist in preparing the reasons and case for the CPO and implementing a CPO (if one is needed) and with the advisors owing a joint duty of care to the Council and THFC.

## **7.8 CPO Costs**

As a matter of general principle all costs associated with the "in principle" decision and proposed Compulsory Purchase Order and S.237 powers will be met by THFC, including:

- time spent by Council staff and consultants in progressing the CPO (including a specific case manager appointed throughout the CPO process to whom those with concerns about the proposed acquisition can have access);
- legal costs of the Council (including any time spent by external Counsel, Legal Services as well as any other agents, advisors etc);
- compensation payments to include acquisition costs and disturbance payments to all affected landowners, lessees or tenants which arise from the CPO and are a natural and reasonable consequence of the property being acquired; and
- other relevant CPO related costs, including all costs, fees and expenses relating to any public inquiry in respect of the CPO.
- Compensation payments to include any Rights of Light, covenants, etc,



which arise from the use of the Council's S.237 Planning Appropriation powers.

- Compensation payments for any statutory nuisance, severance, injurious affection, interference with, disposal or acquisition of rights or interests, which flow as a consequence of the scheme.

## **7.9 Financial exposure**

The formal steps of the CPO process are set out in a flow diagram in Attachment 1. There are a number of areas of financial exposure associated with a CPO and the Appropriation for Planning Purposes (S.237) which are set out below:

### **1. Professional Costs**

Throughout the process of promoting the CPO the Council will be incurring professional and administrative costs. To date the Council has relied on THFC and their solicitors' undertakings that those costs will be paid. It has been agreed with THFC that a budget costing of the programme for the CPO and S.237 process will be prepared and presented to Cabinet if a full CPO resolution is required. It is proposed that THFC will deposit an agreed cash sum into an account that the Council can draw down to pay fees and administrative costs by a given date.

### **2. Blight Notices and Purchase Notices**

A limited number of owners may be able to serve blight notices or Purchase Notices. A blight notice is, effectively, a reverse CPO requiring the Council to take their property immediately. The Council will have two months to respond to the notice. A Purchase Notice may be served by an owner if Planning Permission is refused and the land cannot be put to any reasonable beneficial use. Each blight notice or Purchase Notice will be considered on its' merits in accordance with statutory criteria and any payments required to be made should be covered by the proposed indemnity agreement with THFC.

### **3. Implementation of the CPO**

The decision to proceed with a CPO resolution and implement a CPO will be subject to a further report to Cabinet and will be conditional on the matters outlined in the recommendations to this report.

If the Council makes a CPO resolution, a pre-condition of the Council implementing the CPO and acquiring land compulsorily, is that THFC will have to provide evidence of their intention and ability, in terms of funding & financial arrangements and other evidence, to proceed with the CPO and whole development scheme. If there is any doubt, at that stage, about their financial standing then the Council will not be required to acquire properties

or implement a CPO or S.237.

Assuming that the Council agrees that THFC have the appropriate resources then, prior to the CPO being implemented in relation to any land interest, it is proposed that THFC deposit an agreed estimate of the compensation (plus a margin) into an appropriate account, for the Council to draw on to pay any compensation that is due by an agreed date.

The proposed indemnity agreement protects the Council risk in this respect and requires THFC to pay a specified margin on their deposit to cover variations in value of the interests.

THFC will be responsible for security, insurance, maintenance of the building and land and any other ongoing liabilities from exchange of contracts but will be responsible for payment of any costs the Council incurs in regard to any of these issues.

#### 4. Insolvency

The worst case scenario is if THFC become insolvent after having deposited cash and after the implementation of the CPO, but before transfers of the acquired properties to them took place. In this unlikely circumstance the Council would have the compensation amounts, including an amount to cover ongoing costs, plus a margin so the cost risk is low.

However, the intention is to transfer all interests to THFC as soon as practicable. In order to minimise this risk the transfer will be made almost immediately upon the CPO being implemented, and mechanisms such as holding irrevocable deeds of transfer to THFC will be explored so that the risk (if any) only lasts for the minimum possible time scintilla.

Further details of the financial risks and exposure of the Council will be presented to Cabinet should a full CPO resolution be required.

#### 5. Rights and Other Interests

The CPO process, and other legal mechanisms (S.237, etc), convert any rights over the site into an entitlement to compensation. Prior to the relevant legal process taking place THFC will lodge an agreed estimate of the likely compensation (and a margin) into a deposit account.

#### 6. CPO Compensation

Under the Statutory Compensation Code owners will be paid the full market value of their interest in any land acquired, with the interest being valued at the date that the property is acquired. They will also be paid "disturbance" costs, which include all reasonable costs associated with finding new premises and

relocating their businesses and/or residences. To provide a further level of protection for the Council, THFC are obliged, through the indemnity agreement, to pay a specified margin on any deposit to cover variations in value of the interests being acquired. THFC will endeavour to acquire as many of the interests by agreement and will pay at least the same amount the owner would be paid under the statutory compensation code.

THFC and the Council will publish a scheme for compensation should the Council resolve to use its CPO and S.237 powers in due course.

#### **7.10 Relocation and Hardship**

The Council and THFC have been working on relocation and hardship strategies to minimise the impact of the proposed development. THFC have been successful in compensating and relocating businesses by agreement most of those affected by the Scheme and have so far acquired 85% of the development site. If there are any other owners who wish to sell prior to any CPO resolution, then THFC and their professional advisors will use their best endeavours to reach an appropriate commercial agreement with them. As part of this they will offer support in trying to find alternative premises, if this is feasible, and consider advance payment of any compensation that is likely to fall due under a legal agreement to mitigate hardship.

#### **7.11 Risk Register**

A risk register has been prepared for this project.

A Project Implementation Document (PID) has been prepared and will be monitored by the Council's Regeneration Board.

### **8. Chief Financial Officer Comments**

8.1 The body of the report provides an overview of the financial issues and the financial exposure of the Council in making a CPO. It should be borne in mind that at this stage, the Council is being asked to only make an "in principle" decision to use its' powers. A full detailed assessment of the financial implications and costs of making CPO will be prepared and presented to Members in a further Cabinet Report should a CPO actually be required.

8.2 The extent of the financial risks to the Council in making an 'in principle' decision to use CPO powers is considered by the Head of Legal Services to be "low". A draft indemnity agreement is being negotiated with THFC at the time of writing this report and should provide the Council with the protection it requires to avoid almost all financial risks. However, until a suitable indemnity is in place the Council will need to consider the extent to which it is prepared to continue to incur additional un-indemnified costs.

- 8.3 To date the Council have incurred approximately £20,000 in costs to obtain the specialist external legal and property advice that has been necessary to progress the development to the current position. The Council is currently awaiting THFC's re-imburement of these costs together with a further £20,000 to cover the cost of officer time engaged in the process.
- 8.4 In addition THFC have employed advisors to provide them and the Council with support in terms of land referencing and advice for the "in principle" CPO and S.237 decision. THFC are paying these advisors directly.
- 8.5 In terms of Blight Notices and Purchase Notices, there is a risk, as with any major scheme in the Borough, that an owner may serve these notices. However there are strict legal criteria on which these notices can be served and assessed as valid. The Council's position is that it is unlikely to accept a notice following the "in principle" decision and will ask THFC to negotiate with the owner by agreement.
- 8.6 Looking beyond an 'in principle' agreement, a prerequisite to any resolution of Council to acquire land by CPO will be a robust and viable business plan and funding strategy. It should be recognised at the outset that the business model of many football clubs is not constructed on standard commercial lines. Furthermore, as recent events at both Liverpool FC and Portsmouth FC have highlighted, a clubs balance sheet is very exposed to the success or failure of the football team. This will therefore be an important factor in considering the financial framework that underpins the redevelopment proposals and the risks that the Council will need to mitigate.

## **9. Head of Legal Services Comments**

Legal implications have been outlined in the body of the report.

## **10. Equalities & Community Cohesion Comments**

- 10.1 The Council is required to have regard to its obligations under equalities legislation including the obligations under section 71 of the Race Relations Act 1976. This section requires that in carrying out the Council's functions due regard must be had, firstly to the need to eliminate unlawful racial discrimination, and secondly to the need to promote equality of opportunity and good race relations between persons of different racial groups.
- 10.2 The impact of this scheme has been considered in relation to section 71 as set out above. The Development will have an impact on the local community and in view of the diversity of the Northumberland Park area where a large proportion of homes and business units are owned by members of Black and Minority Ethnic

communities. The conclusion of the Equalities Impact Assessment in relation to the planning application is that the development will have a significant impact on BME communities. However, it is considered, that the delivery of the development itself will ultimately have a positive impact and promote equality of opportunity through improved housing (including affordable and family housing), regenerating the physical environmental, providing local employment and improving sporting facilities.

10.3 This report has been reconsidered to determine its application to the “in principle” decision. Since the “in principle” decision is one step in seeking to bring the planning proposals to fruition it is considered that the conclusions of the report remain valid and can properly be applied to this “in principle” decision as well. In particular, at this stage it is hoped that matters will be resolved by agreement so that no one will be forced to move or give up rights of light against their will.

10.3 However, a further Equalities Impact Assessment will be undertaken and presented at the full resolution stage which will assess separately any equalities issues specifically in relation to making a CPO or the use of Section 237 powers.

## **11. Service Financial Comments**

11.1. N/A Section 8 covers the corporate finance implications of this report.

## **12. Use of appendices /Tables and photographs**

- 12.1. Summary of development proposals and indicative context image
- 12.2. Site plan showing redline boundary of proposed CPO.
- 12.3. CPO process flow diagram
- 12.4. Site plan showing scheme superimposed on the proposed CPO redline boundary and ownerships.

## **13. Local Government (Access to Information) Act 1985**

