




Haringey Council

Report for:	Cabinet - 12th February 2013	Item Number:	XX
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Title:	New Football Stadium and Associated Development at Tottenham – Land Appropriation and Agreement.
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Report Authorised by:	Lyn Garner - Director of Place and Sustainability 
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Ward(s) affected: Northumberland Park	Report for Key Decision
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1. Describe the issue under consideration

The purpose of this report is to seek Cabinet authority for the acquisition, appropriation and disposal of land for planning purposes by the Council to enable the operation of Section 237 of the Town and Country Planning Act 1990 (“S237”) in order to facilitate the delivery of the Stadium and Southern Phases of the Northumberland Development Project (“the NDP Scheme).

- 1.1 On 16 November 2010 Cabinet resolved ‘in principle’ to utilise its land acquisition and appropriation powers to enable the operation of S237 in respect of the NDP Scheme subject to the discharge of five identified pre-conditions.
- 1.2 On 20 March 2012 Cabinet resolved that these five pre-conditions had been discharged when approving the use of the Council’s powers under Section 226 of the Town and Country Planning Act 1990 to make a compulsory purchase order to support the NDP Scheme.

- 1.3 Cabinet also noted on 20 March 2012 that a further report would be presented to Cabinet to deal with the acquisition and appropriation of land to enable the operation of S237 in respect of the NDP Scheme.
- 1.4 This report explains why Tottenham Hotspur Football Club (“THFC”) has requested that the Council intervene and use its powers of land acquisition and appropriation to enable the NDP Scheme to rely on S237 and why such intervention is considered, in principle, to be necessary by officers.
- 1.5 This report provides an overview and explanation of the proposed land acquisition and appropriation to be undertaken by the Council, the legal effect of the operation of S237, and the consequences of S237 being applied to the NDP Scheme.
- 1.6 In summary the Stadium and Southern phases (but not the Northern phase) of the NDP Scheme will infringe the rights of light of neighbouring properties (shown on the plan in Appendix 2 on the exempt part of the report). A plan showing the development site, with the Land to be acquired and (where necessary) appropriated for planning purposes outlined in red, is contained in Appendix 1. An image of the proposed scheme is shown in Appendix 1A. The proposed acquisition, appropriation and disposal of the land by the Council to enable the operation of S237 will remove the risk of the owner (or relevant leaseholder) of a property whose rights of light will be infringed seeking an injunction to prevent the construction of these phases of the NDP Scheme.
- 1.7 In turn the delivery of the NDP scheme will assist the Council’s objectives:
- To provide a focal point for the regeneration of Tottenham.
 - To provide a catalyst for the long-term physical regeneration of Tottenham.
 - To show tangible actions by the Council and THFC working in partnership, post the riots, to provide an opportunity to support the social, physical and economic well being of the area.
 - To bring the vacant, under utilized land and buildings into use and development.
 - To enable THFC to stay and invest within the Borough
 - To enable a comprehensive development and regeneration of the whole of the Northumberland Development Project Site to be achieved.
 - To enable London as a whole to benefit from the regeneration.
 - To maximize the benefits to the community and businesses within London as a whole and within the local area.

2. Introduction by Cabinet Member for Economic Development and Social Inclusion

- 2.1 Members will note that development proposals submitted by THFC were granted planning permission on 20 September 2011. Further amendments and improvements to the NDP Scheme were granted planning permission on 29 March 2012. The redevelopment proposals include a new football stadium for THFC with increased spectator capacity, a food superstore, commercial 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 a part of

the Borough which suffers from endemic socio-economic deprivation and environmental issues.

- 2.3 Members are asked to support the recommendations of this report and recognise the importance of THFC to the community and businesses in Tottenham. The socio-economic, cultural and community benefits of the new football stadium and associated development in Tottenham will bring much needed regeneration to the eastern part of the Borough. This, in turn, will lead to a net socio-economic and environmental benefit to London as a whole.

3. Recommendations

Cabinet is recommended to:

- 3.1 Subject to paragraph 3.4 agree to the acquisition of the freehold interest in land under Section 227 of the Town and Country Planning Act 1990 outlined red on Plan 1 in Appendix 1 (“the Land”) from THFC for planning purposes.
- 3.2 Subject to paragraph 3.4 agree to the appropriation of the Land where necessary under Section 122 Local Government Act 1972 for planning purposes.
- 3.3 Subject to paragraph 3.4 agree to the disposal by the Council of a 999 year leasehold interest in the Land acquired pursuant to paragraph 3.1 and the Land appropriated pursuant to paragraph 3.2 to THFC under section 233 of the Town and Country Planning Act 1990.
- 3.4 Agree that the detailed terms of the acquisition, appropriation and disposal of the Land be delegated to the Head of Corporate Property Services, in consultation with the Head of Legal Services once they are satisfied that:
- (i) the acquisition, appropriation and disposal is necessary in order to enable the NDP Scheme to be carried out including consideration of whether those entitled to rights of light are prepared by agreement (on reasonable terms and within a reasonable time) to permit infringements of those rights; and
 - (ii) the final terms of the acquisition, appropriation and disposal of the Land is in accordance with the Heads of Terms outlined in Appendix 3 (exempt part of this report) and/or such other terms as the Head of Legal Services considers necessary or appropriate.
- 3.5 Agree that the acquisition, appropriation and disposal of the Land shall be conditional upon all of the Land having been acquired either by the Council or THFC (pursuant to the compulsory purchase order or by private treaty).
- 3.6 Grant delegated authority to the Head of Corporate Property Services, in consultation with the Head of Legal Services and the Chief Financial Officer to agree any variations to the Heads of terms and the costs to be paid by THFC.

3.7 Note that a separate report to Cabinet will be prepared in due course concerning the Council as Landowner of properties affected by the rights of light impact arising from the new stadium and associated development.

4. Other options considered

4.1 Option A – Not to support the NDP Scheme with the use of land appropriation powers.

4.2 The implications of this option are that THFC may not be able to acquire the rights needed and therefore they will not be able to secure funding and build the new stadium and associated development and the objectives identified in paragraph 1.7 will not be achieved.

4.3 Option B – Deferring the decision to use of the S237 land appropriation powers

4.4 Deferring any decision to use S237 powers and not delegating to Officers will adversely impact on the timetable for the scheme, the ability to secure funding and delivery of the scheme.

5 Neighbouring Properties and Rights of Light impact

Background to Rights of Light issues

5.1 The proposed Stadium and Southern phases of the NDP Scheme will infringe the rights of light of a number of properties adjoining the NDP site. These properties are identified on the plan attached in Appendix 2 (exempt part of report) and in the Schedule in Appendix 4 (also exempt) to this report.

5.2 Under the Prescription Act 1832 rights of light may arise after 20 years uninterrupted use of daylight through windows in buildings. It is a specialist issue for surveyors and lawyers.

5.3 A right of light is a legal property right. As such any interference with a right to light may be prevented by injunction. Historically developers of tall buildings have been able to avoid injunctions by reaching agreements with affected neighbours for the release of their rights of light upon the payment of compensation.

5.4 When it was not possible to resolve claims by negotiation, the courts used their discretion to award damages instead of an injunction based on compulsory purchase compensation principles where:

- The interference was small;
- It could be estimated in money;
- It could be adequately compensated by a small payment; and
- An injunction would be oppressive.

- 5.5 However recent case law, in particular a 2010 case relating to a development in Leeds, has re-affirmed that an injunction remains the primary remedy for any party whose rights of light will be infringed by a proposed development.
- 5.6 The effect of this court decision is that it has become significantly more difficult to reach negotiated agreements with affected owners of rights to light.
- 5.7 In turn this has made it much more difficult for developers to secure development finance as funders require all injunctible rights to light to have been released through appropriated negotiated agreements before they will provide funding.

Rights of Light affected by the NDP Scheme

- 5.8 The properties reasonably identified by the Club as affected by the new Stadium and Southern development (namely the new residential development) are shown on the Plan in Appendix 2 (exempt) and listed in the Schedule in Appendix 4 (exempt). The affected buildings include properties solely in private ownership as well as units where the Council has a freehold interest (in some cases subject to residential tenancies and leases).
- 5.9 The terms under which the Council, acting as Landowner will agree compensation for any infringement of rights of light of Council owned properties, and any terms for waiving compensation, if Cabinet decides this, will be the subject of a separate report to Cabinet in due course.
- 5.10 The impact of the Stadium and Southern Phases of the NDP Scheme on the daylight and sunlight enjoyed by neighbouring properties was assessed and considered in full by the Council when it granted planning permission for the NDP Scheme. When granting planning permission the Council's planning sub-committee considered that the impact on the daylight and sunlight enjoyed by these adjoining properties was acceptable.
- 5.11 Rights of light are however assessed differently to the planning amenity assessments and a number of properties have been identified as experiencing residual rights of light injury under the development proposal, which must be addressed prior to the commencement of the Stadium and Southern Phases of NDP Scheme.

Use of Planning Powers – effect of S237

- 5.12 Against the above background THFC has approached the Council to request that it exercise its powers to acquire and appropriate the Land for planning purposes. This will enable the NDP Scheme to benefit from the protection provided by S237.

The intention is that all the Land will be acquired by THFC. The portion of the Land that THFC entities already own (or are reputed to own) is shown coloured blue on Plan 1 at Appendix 1.

The Council owned portion of the Land, known as “Wingate Land” within the development site, is coloured orange on Plan 1 at Appendix 1. The Council has previously resolved to sell the Wingate Land to THFC (as discussed below).

The portion of the Land coloured green is public highway that is subject to draft Stopping Up Orders and will either revert to THFC ownership (Bill Nicholson Way) or is to

be acquired by the Council (funded by THFC) under the London Borough of Haringey (Northumberland Development Project) (No 1) Compulsory Purchase Order 2012 (if confirmed), then transferred to THFC.

The portion of the land coloured purple is owned by third parties and is either to be acquired by THFC by private treaty or acquired by the Council under the London Borough of Haringey (Northumberland Development Project) (No 1) Compulsory Purchase Order 2012 (if confirmed), then transferred to THFC.

Once all the Land is in THFC ownership, it would then be acquired by the Council from THFC for planning purposes under Section 227 of the Town and Country Planning Act 1990. The Council owned Land would be appropriated by the Council for planning purposes under Section 122 of the Local Government Act 1974. The Council would in turn grant a 999 year lease of the Land to THFC.

- 5.13 Under S237 where the Council acquires or appropriates land for planning purposes the subsequent development of that land will be lawful (provided it is carried out in accordance with planning permission) notwithstanding that it interferes with any right of light (or any other right or restriction).
- 5.14 S237 operates to translate the right of an owner of an affected property to an injunction into an entitlement to compensation. The compensation is assessed against compulsory purchase compensation principles based on the diminution of the value of the affected property as a result of the interference with the right - as set out in more detail below.
- 5.15 The protection provided by S237 will apply both to the Council, were it to undertake the development, and also to any party deriving title to the Land under the Council.
- 5.16 Therefore if the Council acquires (and appropriates where necessary) the Land and subsequently disposes of the Land to THFC as recommended in this report, the risk of an affected owner seeking an injunction to prevent the NDP Scheme based on the infringement of a right to light (or any other right) will be removed.
- 5.17 This will enable THFC to secure the necessary funding to ensure the delivery of the NDP Scheme. For the reasons set out above if it is not able to rely on the protection provided by S237 it is likely that THFC will be unable to secure the necessary funding for the development.

Other Rights

- 5.18 In addition to rights of light there are various historic restrictive covenants and other legal rights affecting the NDP site. They include private rights of way, restrictive covenants restricting the sale of alcohol, restrictive covenants restricting the sale and display of pornographic material, rights of drainage and various unknown rights. The effect of the proposed acquisition and disposal of the Land for the purpose of S237 will be to enable the Stadium and Southern phases of the NDP Scheme to proceed notwithstanding it may interfere with any of these rights and restrictions. The owners of the rights, many of which are unknown, will become entitled to compensation on the same basis as owners of properties whose rights of light will be infringed.

Compensation Entitlement

- 5.19 As explained above the effect of S237 is to translate affected owners' rights to light into an entitlement to compensation. Under S237 this compensation is based upon the compulsory purchase principles of diminution of value. This will compensate owners for the reduction in the value of their properties as a result of the infringements of their rights by the NDP Scheme.
- 5.20 As set out below it is proposed that following this Cabinet's resolution THFC will formally approach each of the identified owners (including relevant leaseholders) of the affected properties to seek to secure their agreement to the infringement of their rights of light and other rights (e.g. private rights of way or covenants) on the payment of compensation. THFC has agreed with officers a methodology of compensation, based on statutory codes of compensation and established rights of light compensation principles which has been confirmed as reflecting best practice by the Council's independent rights of light surveyors. THFC will seek to reach agreement with affected owners based on this agreed methodology.
- 5.21 It is important to recognise that offers of compensation based on the agreed methodology are likely to be higher than affected owners would be entitled to claim under the diminution in value principles under S237. It is therefore hoped that the Council resolution to enable the operation of S237 will encourage affected owners to reach negotiated settlements with THFC.
- 5.22 As part of their approach to affected owners THFC has agreed to pay their reasonable and appropriate professional costs to assist with the negotiation process. In addition THFC has agreed to work with the Council and affected neighbours to explore practical mitigation such as works to increase glazing provision or the installing of additional electric lighting within affected spaces.

Considerations

- 5.23 S237 converts affected owners ability to apply for an injunction into an entitlement to compensation. The purpose of the legislation is to allow beneficial regeneration to take place without risk of injunctions being sought to prevent the development.
- 5.24 It is recognised that the exercise of S237 powers can involve the interference with human rights namely the right to peaceful enjoyment of possession and the right to respect for private and family life and home.
- 5.25 The City of London Corporation is a good example of a Local Authority that has in recent years become more willing to acquire land for the purpose of S237 given the number of tall buildings and rights of light issues in the City. The City has based its decisions to acquire land for the purpose of S237 against a series of specified criteria. Officers consider that it would be prudent for the Council to likewise make their decision against a number of criteria which are set out below. These criteria are largely based upon those taken into account by the City of London Corporation where S237 powers and the mechanism for implementing this been used.
- 5.26 **Criteria 1: The use of statutory powers is required in that:**

- (i) **The infringements cannot reasonably be avoided;**

- (ii) The easements to be interfered with cannot reasonably be released by agreement with affected owners;
- (iii) The development is prejudiced due to the risk of injunction and adequate attempts have been made to remove the injunction risks.

- 5.27 The NDP Scheme is predicated upon THFC's requirement for a new world class stadium of a certain size and capacity. THFC has advised that it is not possible to make any minor alterations to the design of the Stadium or Southern Phases that will make a material difference to the infringement of the rights to light. This has been confirmed by the Council's rights to light advisors.
- 5.28 Interference with the rights of light is therefore necessary to enable the NDP Scheme to proceed.
- 5.29 Consideration should be given to whether agreements with the owners of affected properties can be reached to permit infringements with the rights of light.
- 5.30 As set out above due to recent case law it is much more difficult to reach negotiated agreements with affected owners. It may not be possible for THFC to reach agreement with all affected owners on reasonable terms within a reasonable timescale. It is highly likely that some affected owners will seek or at least threaten injunctive relief.
- 5.31 It is proposed that following this resolution THFC will formally seek to reach agreement with all the identified affected owners. It is proposed that THFC will regularly update the Council on the progress of these negotiations and that the Council will only acquire, appropriate and dispose of the Land once officers are satisfied that THFC is not likely to be able to reach agreements with all affected parties on reasonable terms within a reasonable timescale.
- 5.32 Officers have discussed the basis on which the compensation payable for the infringement of the rights of light should be assessed. A compensation methodology has been agreed with THFC's advisers and confirmed as appropriate by the Council's rights of light advisors. It is proposed that THFC will formally approach each of the materially affected owners and make offers to pay compensation (and where applicable consider appropriate alterations to the affected properties) based on the agreed methodology. As part of this approach THFC will also offer to pay affected owners appropriate and reasonable professional costs to assist with the negotiations.
- 5.33 As set out above THFC will not be able to secure development finance for the Stadium and Southern Development until all injunctible rights of lights (and other rights) risks have been removed. THFC will therefore not be able to bring forward the Stadium and Southern Developments whilst there remains a risk that an affected owner could prevent the construction of the development by way of injunction.
- 5.34 **Criteria 2: The use of statutory powers will facilitate the carrying out of the Development**
- 5.35 As explained above, THFC will not be able to secure the necessary development financing for the NDP Scheme whilst there remains a risk that affected owners could prevent the development by seeking injunctive relief.

- 5.36 THFC has confirmed and Council officers agree that the Stadium and Southern phases of the NDP scheme cannot be carried out until either agreement has been reached with all affected owners or the rights of light (and other rights) have been overridden by virtue of S237.
- 5.37 Criteria 3: The development will contribute to the promotion and improvement of the economic social or environmental well-being of the area and therefore be in the public interest**
- 5.38 The major benefits of the development are summarised in Section 6 below. On 20 March 2012 Cabinet resolved to use its compulsory purchase powers to support the NDP Scheme. In making that resolution Cabinet agreed with officers' view that the Stadium and Southern phases of the NDP Scheme will make a significant contribution to the economic, social and environmental well-being of the North Tottenham area.
- 5.39 It is officers' view in accordance with the previous views of Cabinet that the NDP Scheme will bring major benefits to the North Tottenham area and is therefore in the public interest.
- 5.40 Criteria 4: The benefits of the Development could not be achieved without giving rise to the infringements of the identified rights**
- 5.41 The major benefits arising from the NDP Scheme are generated by THFC's desire to develop and the Council's desire to encourage the substantial public benefits of a new world class Stadium in Tottenham. As set out above it is not possible to redesign the stadium so that does not infringe the identified rights to light whilst still meeting these requirements.
- 5.42 THFC would not bring forward a new stadium nor the Council support such a scheme that did not meet their requirements. Therefore the practical reality is that no development would be brought forward if the approved design was compromised by claims relating to rights of light or other private rights. The substantial public benefits arising from the NDP scheme can only be achieved through reliance upon S237.
- 5.43 Criteria 5: Is the public interest to be achieved proportionate to the private rights being infringed (the Human Rights Act 1998)?**
- 5.44 The Human Rights Act 1998 effectively incorporates the European Convention on Human Rights into UK law and requires all public authorities to have regard to Convention Rights. In making decisions Members therefore need to have regard to the Convention. The rights that are of particular significance to Cabinet's decision are those contained in Articles 8 (right to home life) and Article 1 of Protocol 1 (peaceful enjoyment of possessions).
- 5.45 Article 8 provides that there should be no interference with the existence of the right to home life except in accordance with the law and, as necessary in a democratic society in the interest of the economic well-being of the country, protection of health and the protection of the rights and freedoms of others. Article 1 of the 1st Protocol provides that no-one shall be deprived of their possessions except in the public interest and subject to the conditions provided for by law although it is qualified to the effect that it should not in any way impair the right of a state to enforce such laws as it deems necessary to control the uses of property in accordance with the general interest.

- 5.46 In determining the level of permissible interference with enjoyment the courts have held that any interference must achieve a fair balance between the general interests of the community and the protection of the rights of individuals. There must be reasonable proportionality between the means employed and the aim pursued. The availability of an effective remedy and compensation to affected persons is relevant in assessing whether a fair balance has been struck.
- 5.47 Therefore, in deciding whether to proceed with the recommendations, Cabinet needs to consider the extent to which the decision may impact upon the Human Rights of the landowners and residents and to balance these against the overall benefits to the community, which the redevelopment will bring. Members will wish to be satisfied that interference with the rights under Article 8 and Article 1 of Protocol 1 is justified in all the circumstances and that a fair balance would be struck in the present case between the protection of the rights of individuals and the public interest.
- 5.48 Human rights issues arise in respect of the proposed arrangements. Cabinet must balance the public benefits that will arise from the use of statutory powers against the interference with the private interests. Cabinet must consider whether this interference is necessary and proportionate.
- 5.49 The major public benefits that will stem from the Council's statutory powers are summarised in full above and below.
- 5.50 When assessing the interference with private interests it is important to recognise that the impact of the proposed development in daylight and sunlight terms was fully assessed when the Council granted planning permission for the NDP Scheme. The Council's planning committee considered that the development was acceptable in these terms.
- 5.51 Similarly the right of affected owners to claim compensation for the infringement of their rights of light (and other rights) is also relevant to an assessment of the proportionality of the infringement with the private rights.
- 5.52 Against this background officers' view is that the interference with the private rights is proportionate and necessary in this instance when assessed against the substantial public benefits that the new Stadium and Southern developments will generate and that the scheme of compensation proposed will mitigate any infringement of their rights.

6. Planning Framework

- 6.1 The NDP Scheme can bring major benefits for Tottenham, signalling confidence in the area to counteract the negative images of 2011's riots. It will complement other important elements of the Tottenham recovery and regeneration strategy being spearheaded by the Council and partners. THFC's approved plans for a new Stadium and associated development can be the first step to securing major regeneration in North Tottenham. This catalyst, if properly harnessed, can provide the Council with a unique opportunity to secure more than just a stadium development. It can encourage regeneration across North Tottenham and beyond providing a new leisure destination, plus new homes and jobs in an area where investment is the key to providing opportunity for local people.

- 6.2 THFC is already a major investor in the borough. The existing Stadium draws hundreds of thousands of visitors each year to Tottenham boosting the local economy. The work of Tottenham Hotspur Foundation supports local community groups, school children, young people and the unemployed. The NDP Scheme with the new larger capacity Stadium, new retail and commercial floor-space as well as new homes, public space and heritage improvements, will create hundreds of new jobs many of which will be targeted to local people. The additional 20,000+ capacity to attract new spectators to each football match in the new Stadium (plus participants at non-football events and conferences) will bring substantial new spending in the local economy, supporting local businesses – both those supplying direct to the Stadium as well as those in the general area.
- 6.3 The NDP Scheme has planning permission and changes to the NDP Scheme to boost viability were approved in March 2012. The granting of the planning permission was based on a thorough assessment of the Scheme demonstrating its fit with national, London and local planning policies. This included an assessment of the effect of the proposals upon the daylight and sunlight amenity of neighbouring properties.
- 6.4 The Section 106 agreement in respect of the NDP Scheme secures substantial economic and employment benefits for the borough generally and Tottenham specifically. Cabinet has also authorised (7th February 2012) the start of work on promoting the regeneration of the wider area and has approved 10 Transformation Principles to guide this work. This work is stimulated by the NDP Scheme investment.
- 6.5 The recommendations in this report take a further step in helping to deliver the major investment in the NDP Scheme that will bring major economic benefits for Tottenham and enable the retention in the public interest of 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 will also promote the redevelopment of other sites in the Borough. This, in turn, will lead to net socio-economic and environmental improvements that are in the public interest of Tottenham, the borough and, indeed, London.
- 7.0 Cabinet pre-conditions to the use of S.237 Land Appropriation powers**
- 7.1 As reported to Cabinet on 20th March 2012 the pre-conditions attached to the November 2010 'in principle' resolution have been satisfied in order for Cabinet to use their S237 powers.
- 8.0 Financial issues and risk to the Council in using S.237 powers**
- S237 Costs**
- 8.1 As a matter of general principle all costs associated with the decision will be met by THFC, including:
- 1. Administrative, acquisition and leaseback costs**
- time spent by Council staff and consultants in progressing the land acquisition and disposal;

- legal costs of the Council (including any time spent by external Counsel and Legal Services);
- other relevant related costs, including all costs, fees and expenses relating to any referral to a Tribunal to settle the compensation for any landowners affected by the scheme.
- all taxation of any kind for which the Council may become liable as a consequence of entering into and/or performing the sale of the freehold to the Council and leaseback to THFC, including SDLT, irrecoverable VAT and any other tax.
- any other liabilities arising from the acquisition of the freehold and grant of a lease.

2. Compensation

- compensation payments will be made by THFC which flow as a consequence of the scheme and the Council's decision to override any rights.

Financial exposure

- 8.2 Under S237 in the event that THFC does not discharge its liability to pay compensation, affected owners can recover their compensation entitlement from the Council. To protect the Council's position on this issue as part of the legal agreements THFC will provide an indemnity to the Council against all its compensation liabilities. Similarly THFC will indemnify the Council against any tax liability arising from the Council entering into the land acquisition, appropriation and disposal arrangements.
- 8.3 In terms of risk management, THFC have agreed to continue to negotiate with landowners and acquire all necessary land and rights by agreement until such time as the Council considers it reasonable to exercise S.237 powers.
- 8.4 **Comments of Chief Financial Officer and Financial Implications**
- 8.5 Since Cabinet resolved in principle to use S237 land appropriation powers the Council commissioned Grant Thornton to review the THFC business plan and funding strategy and they concluded, at the time the planning application was submitted, that there is a reasonable prospect that the revised scheme approved by Planning Committee will proceed. The implementation of the scheme is dependent on the Council using its S237 powers to support the regeneration of the area.
- 8.6 However before the Council proceeds with the use of S237 powers (which Officers are asking for to be delegated to them) Cabinet needs to be assured that any risks associated with the process including the acquisition, appropriation and disposal of land have been addressed. The tax risks are being considered by the Council's Financial Advisors Grant Thornton and will be covered in the proposed legal agreement with THFC by way of an indemnity. In addition, the Council will need to ensure that it manages the risk of any VAT liability being unrecoverable by following the process set out in the Heads of Terms. The transaction should only proceed once all tax implications have been fully resolved.
- 8.7 In summary, THFC have agreed to indemnify the Council in relation to:
- a. compensation claims by third parties arising from the section 237 extinguishment

- b. all taxation of any kind for which the Council may become liable as a consequence of entering into and/or performing the sale of the freehold to the Council and leaseback to THFC, including any SDLT, irrecoverable VAT and any other tax.
 - c. professional fees.
 - d. any other liabilities arising from the acquisition of the freehold and grant of a lease.
- 8.8 Therefore, once a satisfactory indemnity has been provided for as part of the S237 Sale and Leaseback Agreement (the Heads of Terms for which are set out at exempt Appendix 3), there should be no financial risk to the Council in entering into these arrangements.
- 8.9 As stated in the Heads of Terms, the Wingate Land (the only Council land within the development site), is to be sold by the Council to THFC. This sale is to be at best consideration certified independently by the District Valuer, and was approved by Cabinet on the 20th March 2012 and included the terms of the Phase Two Supplemental CPO and Land Agreement that has been entered into between the Council and THFC.
- 8.10 The implementation of the S237 powers will not commence until any outstanding sums owing to the Council by THFC under the Phase One CPO Indemnity Agreement and Phase Two Supplemental CPO and Land Agreement have been settled in full. A separate report will be prepared for a future Cabinet meeting concerning the rights of light impact on Council owned properties which are affected by the scheme and the compensation arrangements for these.

9. Head of Legal Services Comments and Legal implications

- 9.1 The legal implications of the proposed acquisition, appropriation and disposal of the Land to enable the NDP Scheme to benefit from the protection provided by S237 are assessed in full in this report.

10. Human Rights Act 1998 Implications

- 10.1 The Human Rights Act implications of the proposed acquisition, appropriation and disposal of the Land to enable the NDP Scheme to benefit from the protection of S237 are addressed in full above.

11. Equalities and Community Cohesion Comments

- 11.1 An Equalities Impact Assessment (EqIA) was been completed and attached to the 20th March 2012 Cabinet report. This report addressed both the proposed use of the Council's compulsory purchase powers and also the proposed acquisition, appropriation and disposal of land to enable the scheme to benefit from the protection provided by S237.
- 11.2 The Council is required to complete an Equalities Impact Assessment (EqIA) for the purposes of meeting its obligations under the Section 149 of the Equality Act 2010. This requires the Council to have due regard to the need to:
- i. eliminate discrimination, harassment and victimisation of persons protected under that Act (protected characteristics);
 - ii. advance equality of opportunity for protected characteristics; and

- iii. foster good relations between groups who share a protected characteristic and those that do not share that characteristic.

11.3 Adopting the nine step approach consistent with the Council's Service Delivery Template, the EqIA identifies that the impact on any persons or groups protected under the Act is likely to be positive and in some instances, significantly so.

11.4 This shows that there are no adverse consequences that will arise from the proposed decision and where there is an adverse impact on rights of light of landowners a scheme of compensation will be implemented to mitigate this impact. Under the scheme of compensation all owners (including the Council as landowner) will be treated equally and fairly, and will have the right of appeal to a Tribunal.

12. Policy Implications

12.1 The recommendations are consistent with the planning policies and the Council's regeneration strategy for the area. The use of S.237 land appropriation powers is consistent with corporate asset policy as set out in the Asset Management Plan in supporting regeneration of the area.

13. Use of Appendices

Appendix 1: Plan showing Land (outlined with a redline boundary) to be acquired and appropriated for Planning purposes.

Appendix 1A: An image of the proposed scheme.

Appendix 2: Plan showing properties with potentially affected prescriptive rights (this document is exempt)

Appendix 3: Heads of Terms for Sale and Lease-back – S.237 Appropriation (this document is exempt).

Appendix 4: Schedule listing properties with potentially affected prescriptive rights (this document is exempt).

14. Local Government (Access to Information) Act 1985

14.1 Background Papers

24th February 2009 - Northumberland Development Project (Exempt)

30th September 2010 – Planning Committee Report on NDP Application

16th November 2010 – Cabinet Report on “in principle” CPO resolution.

7th February 2012 – Cabinet Report “Funding and Investment Package” for Tottenham Regeneration Programme.

13th February 2012 - Planning Sub-Committee Report on variations to S.106

20th March 2012 – Cabinet Report on CPO resolution.

14.2 The report contains exempt information. Exempt information is contained in Appendices 2, 3 and 4 which are **not for publication**. The exempt information is under the following category (identified in amended schedule 12A of the Local Government Act 1972):-

S(3) Information relating to the financial or business affairs of any particular person including the authority holding the information.

Image of the proposed scheme



NORTHUMBERLAND DEVELOPMENT PROJECT

THE DEVELOPMENT

