

**Report for:** Cabinet

**Item number:** 16

**Title:** Tottenham Hotspur Football Club stadium and associated development – land appropriation agreement

**Report authorised by:** Lyn Garner, Director of Regeneration, Planning and Development

**Lead Officer:** Sarah Lovell, Area Regeneration Manager (North Tottenham West)

**Ward(s) affected:** Northumberland Park

**Report for Key/  
Non Key Decision:** key decision

**1. Describe the issue under consideration**

- 1.1 Tottenham Hotspur Football Club (“THFC”) have submitted a new planning application for the Northumberland Development Project (“revised NDP”), which is located on the THFC site as shown edged blue on the plan in Appendix 1 (“the THFC Site”). This revised planning application will, if agreed by the Planning Sub-Committee on the 16<sup>th</sup> December 2015, infringe the rights of light of a number of properties adjoining the THFC Site.
- 1.2 Because of this, THFC has requested that the Council exercises its statutory powers to acquire (under Section 227 of the Town and Country Planning Act 1990 (as amended) (“the Act”)) the THFC Site for planning purposes and then lease-back the THFC Site to THFC. This will enable both the Council and THFC to benefit from the protection afforded by Section 237 of the Act (“Section 237”) when implementing the revised planning application.
- 1.3 Section 237 is a legal provision that has the effect of converting the rights of a property owner (including rights to light) to an entitlement to compensation only. This means that a property owner may not injunct a development scheme and so prevent its implementation.
- 1.4 Officers are recommending this course of action, as they want to support the revised NDP, which will deliver catalytic regenerative and community benefits. The protection of Section 237 will ensure that injunctable rights are removed and consequently the funding and the delivery timescales of the scheme will not be adversely affected.
- 1.5 This report explains what easements are (especially rights of light); why THFC has requested that the Council intervenes and uses its statutory powers; the legal effect of the operation of Section 237 and why such an intervention is considered by Officers to be necessary and appropriate.

- 1.6 What are “easements” and “third party rights” and, in particular, what is a right of light?
- 1.7 An easement or a third party right is a right enjoyed by a third party over land owned by another party – for example rights of way or rights of light.
- 1.8 A right of light is enjoyed by one property against another and protects the amount of light enjoyed by a property in accordance with well-established principles.
- 1.9 Any interference with a right of light may be prevented by those affected by seeking an injunction against those who are infringing their right. Historically, developers of tall buildings have been able to avoid injunctions by reaching settlement agreements with affected neighbours for the release of their rights of light upon the payment of compensation. However, all such settlements must be reached by agreement and if that is not possible there have been cases where those who enjoy rights of light have delayed or prevented a development from proceeding by threatening to or actually seeking an injunction.
- 1.10 What is Section 237?
- 1.11 Section 237 applies where the Council acquires or appropriates land for planning purposes so that easements and third party rights (including rights of light and those described in para 6.10 below) may be overridden pursuant to those provisions by development of that land (provided it is carried out in accordance with planning permission).
- 1.12 As detailed above, Section 237 operates to translate the right of an owner of an affected property from an injunctionable right into an entitlement to compensation only. 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.
- 1.13 The protection provided by Section 237 will apply both to the Council, were it to undertake the development, and also to any party deriving title to the land from the Council. Therefore, if the Council acquires the THFC Site for planning purposes and subsequently disposes of the THFC Site, the risk of an affected property owner, tenant or occupier seeking an injunction to prevent a scheme going ahead based on the infringement of a right to light (or any other right) will be removed.
- 1.14 For Section 237 to come into effect the Council must resolve:
- To acquire the THFC Site under Section 227 of the Act, which authorises the Council to acquire land for planning purposes. To do so the Council would need to be satisfied that the circumstances set out in Section 226 of the Act are met – in summary, that acquiring the land would facilitate the carrying out of development and that the development in question would contribute to the economic, social or environmental well-being of the area, and;

- That the requirements of Section 233 of the Act, which authorises the disposal of land by a Council (at the best consideration that can reasonably be obtained) that has been acquired for planning purposes providing the Council is satisfied that the disposal is expedient to secure the best use of the land or the carrying out of the development which it appears to the Council is needed for the proper planning of the area.

## **2. Cabinet Member Introduction**

- 2.1 THFC have been a fixture in north Tottenham for over a century and have come to be a major driver in economic and social value not only in Tottenham but the borough as a whole. This has been through being both a major sporting attraction and as a delivery vehicle of employment and education programmes. In their revised planning application for the NDP scheme, submitted in September 2015, THFC raise the bar and look to accelerate the pace of socio-economic and physical change in north Tottenham.
- 2.2 If granted planning permission, the revised NDP scheme will bring a state-of-the-art stadium that will have an increased capacity for football, American Football (NFL), concerts and community events and thus help realise the Council's vision for creating a new leisure destination in north Tottenham. Indeed, just through hosting the world's most popular leagues, the Premier League and NFL - collectively viewed by over 5 billion people in 200 countries, the new stadium will raise the profile of Tottenham around the world.
- 2.3 As well as helping to create a leisure destination for London and acting as a catalyst for wider regenerative change, the revised NDP also significantly increases the community benefits of the scheme. This includes an increase in the number of new homes and jobs generated, the provision of a modern new health centre and more high quality public open space, including a new multi-use square. The revised plan seeks to deliver over £600m of investment into north Tottenham and will generate at least 19.45 million per year for the local economy.
- 2.4 Members are asked to support the recommendations of this report. By supporting these recommendations Members will be ensuring that injunctions, which could adversely affect the scheme going ahead will be prevented and will ensure that THFC can secure the necessary funding to deliver the revised scheme. Members are asked to recognise the critical importance of THFC to the community and businesses in Tottenham. The socio-economic and community benefits of the revised NDP will bring much needed regeneration to Tottenham and help meet the Council's objectives as set out in both the Strategic Regeneration Framework ("SRF") and the emerging Tottenham Area Action Plan ("AAP"). This, in turn, will lead to a net socio-economic and environmental benefit to London as a whole.
- 2.5 Members are also asked to note that THFC have undertaken an extensive engagement process with all parties who have their rights of light infringed. THFC have offered to pay reasonable costs for all parties to receive both independent legal and specialist rights of light advice.

## **3. Recommendations**

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- 3.1 It is recommended that Cabinet agree the following, subject to the THFC's revised planning application for the NDP (HGY/2015/3000) securing a positive resolution to grant planning approval on the 16<sup>th</sup> December 2015:
- (i) To acquire the freehold interest in the THFC Site, pursuant to Section 227 of the Act for planning purposes;
  - (ii) To dispose of the THFC Site to Meldene Limited (a THFC company) pursuant to Section 233 of the Act;
  - (iii) Resolves that it is the intention of the Council that its resolutions under Sections 227 and 233 are intended to attract the application not only of Section 237, but also any replacement, whether Clause 137 of the Housing and Planning Bill (as enacted) or otherwise;
  - (iv) That the terms of the acquisition and the disposal for the THFC Site shall be based on the Heads of Terms ("the Heads of Terms") attached at Appendix 2 (exempt) of this report;
  - (v) To give delegated authority to the Director of Regeneration, Planning and Development in consultation with the Assistant Directors of Corporate Property & Major Projects and Corporate Governance to agree any variation to the Heads of Terms;
  - (vi) To give delegated authority to the Director of Regeneration, Planning and Development and the Chief Operating Officer to agree the compensation from THFC in relation to Council owned properties that have their freehold right of light infringed by the revised NDP; and
  - (vii) To give delegated authority to the Assistant Director of Corporate Property & Major Projects in consultation with the Assistant Director of Corporate Governance to agree the deed of release for these properties.

#### **4. Reasons for decision**

- 4.1 The overarching rationale for supporting all of the recommendations above is that the Council wishes to support and facilitate the delivery of the revised NDP scheme, which as mentioned above, will bring significant public benefits, act as a catalyst for wider regenerative change and will deliver the objectives for north Tottenham as set out in the SRF and the AAP. If the Council were to not agree these recommendations, the revised NDP scheme will be at risk of injunction and will not be able to secure the necessary funding.
- 4.2 The key reason for supporting the acquisition and disposal of the site, recommendations (i) and (ii), is that it will facilitate the delivery of the revised NDP scheme contributing to the economic and social well being of the area. The development is strongly in the public interest and without such acquisition and disposal neither THFC nor anyone else can or will carry out the development. The detail consideration and rationale for both recommendations

(i) and (ii) which will have the effect of engaging Section 237 is set out in paragraphs 6.12 - 6.48 of this report.

- 4.3 The reason for recommendation (iii) is that the Housing and Planning Bill is currently progressing through Parliament. This contains Clause 137 which will (if enacted) lead to the repeal of Section 237 and its replacement with a similar provision making available Section 237 powers to a wider number of public bodies. It is anticipated that transitional provisions will also be enacted to “save” any resolutions made in order to give effect to Section 237. But it is felt that the Council should resolve that its resolutions under Sections 227 and 233 are intended to attract the application not only of Section 237 but also any replacement whether Clause 137 or otherwise.
- 4.4 The reason for supporting recommendations (iv) and (v) are that the Council will need to have agreed terms for the disposal of the THFC Site. Without agreed terms, the acquisition and disposal of the site could not go ahead.
- 4.5 The reason for supporting recommendation (vi) is that the Council is entitled to compensation for the infringement of its rights of light by the revised NDP in respect of its properties. Clearly, the Council would not wish to threaten the delivery of the development through seeking an injunction. Accordingly, Officers have sought independent rights of light advice and are finalising negotiations on the level of compensation the Council is entitled.

## **5. Alternative options considered**

- 5.1 Officers have considered not acquiring the THFC Site for planning purposes. The implication of this option is that the revised NDP will be at significant risk of injunction to stop the development from being carried out.
- 5.2 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.
- 5.3 When it was not possible to resolve claims by negotiation, the courts use 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.
- 5.4 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.
- 5.5 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.

- 5.6 In turn, this has made it much more difficult for developers to secure development finance as funders require all injunctable rights to light to have been released through appropriated negotiated agreements before they will provide funding.
- 5.7 The revised NDP will help facilitate the wider regeneration objectives set out in the SRF and meet the site requirements defined within the AAP. Consequently, Officers believe that removing the risk of injunction and any detrimental impact injunction would have on the funding required to deliver the revised NDP is the only option. Officers therefore, recommend that the Cabinet agree the recommendations above.

## **6. Background and summary information**

### **Background**

#### Northumberland Development Project

- 6.1 THFC have been promoting the redevelopment of the existing THFC stadium and surrounding site since 2009. In 2012, following revisions to earlier planning applications, THFC secured a planning permission to develop a 56,250 seat stadium, a new supermarket, new commercial space and 285 new homes.
- 6.2 Much progress has been made with delivering the scheme. The first phase, which included a new supermarket and new University Technical College has been built. The Compulsory Purchase Order was confirmed in 2015, after statutory challenge, and the remaining land acquired by agreement thereby ensuring that all land required to deliver the project has now been secured. It is also the case that ground works have, pursuant to the revised basement planning permission granted in 2015, commenced on the site.
- 6.3 In September 2015, THFC submitted a new planning application for the revised NDP. This application seeks to increase the capacity of the stadium to 61,000 seats with associated 'Tottenham Experience' museum and shop, deliver 585 residential homes (in four residential towers ranging from 16 – 32 storeys), a hotel, a new 'extreme sports' centre and a health centre. This planning application is due to be considered by the Council's Planning Sub-Committee on the 16<sup>th</sup> December 2015. The land on which the revised NDP is to be implemented is the THFC Site.

#### Previous Cabinet decision - Rights of Light and Section 237

- 6.4 Following THFC securing planning approval in 2012, they requested that the Council utilise its statutory powers to acquire, and appropriate the THFC Site for planning purposes and then lease-back the site to THFC. This would have enabled THFC to benefit from the protection provided by Section 237 when implementing that approval.
- 6.5 In February 2013 the Cabinet agreed to utilise its powers to acquire the THFC Site for planning purposes and then dispose of the site by granting THFC a 999 year leasehold. However, these recommendations were subject to the Head of Corporate Property Services, in consultation with the Head of Legal Services

being satisfied that 'the acquisition, appropriation and disposal is necessary in order to enable the NDP Scheme to be carried out including consideration of whether those entitled rights of light are prepared by agreement (on reasonable terms and within a reasonable time) to permit infringements of those rights'.

- 6.6 This condition was in place, as at that time, THFC had not initiated the process of negotiating with owners/tenants whose right of light would be affected by the NDP.
- 6.7 Whilst Cabinet have already made a decision to utilise its powers to acquire and dispose of the THFC Site for planning purposes, this decision was based on the planning permission granted in 2012 and was made prior to THFC initiating any negotiations with owners/tenants whose right of light would be affected by the NDP.
- 6.8 As a new planning application, which promotes higher development that will infringe the rights of light of a number of properties adjoining the THFC Site, has been submitted and is to be considered at Planning Sub-Committee tomorrow evening, the Cabinet will be required to make a new decision in relation to the use of Section 237 in respect thereof.
- 6.9 It is the stadium and buildings in the southern phase of the revised NDP which will infringe the rights of light of a number of properties. These properties are identified on the plan attached in Appendix 3 (exempt) and in the Schedules in Appendices 5 and 6 (exempt) to this report.

#### Other rights

- 6.10 In addition to rights of light, there are various historic restrictive covenants and other legal rights affecting the THFC Site. They include private rights of way, restrictive covenants restricting the sale of alcohol, rights of drainage and various unknown rights. The majority of these rights are historic, dating back to the turn of the century and are no-longer relevant. A schedule of these rights can be found in Appendix 4 (exempt).
- 6.11 If the Council acquires the land for planning purposes these rights will also be overridden and translated from an injunctable right into an entitlement to compensation only.

### **Summary Information**

#### Use of Section 237 - Considerations

- 6.12 The effect of Section 237 is to allow beneficial regeneration to take place without the risk of injunction being sought to prevent the development. However, it is recognised that this can involve the interference with human rights – in particular the right to peaceful enjoyment of possession and the right to respect for private and family life and home.
- 6.13 In light of this, Officers have looked at best practice and have developed 6 key areas of consideration (adapted from the City of London Corporation) to help

determine whether the use of Section 237 is appropriate, reasonable and necessary. The considerations are set out below:

6.14 Consideration 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.*

6.15 The revised NDP has been designed to take into account THFC's requirement for a new world class stadium of a certain size and capacity, which will host both football and NFL matches for London and the need to meet the Council's requirements as set out in the AAP.

6.16 THFC has advised that it is not possible to make any minor alterations to the design that will make a material difference to the infringement of the rights to light. Interference with the rights of light is therefore necessary to enable the revised NDP to proceed.

6.17 Consideration should be given to whether agreements with the owners of affected properties can be reached to permit infringement with their rights of light. 55 properties potentially have their right of light affected but, as many properties were subject to leasehold interests, there were 91 legal interests to reach agreement with. In June 2015, THFC initiated a thorough engagement process with all affected parties. Officers have met THFC on a fortnightly basis to understand and review the progress of the engagement and negotiation. The detail of the engagement and negotiation undertaken can be found in the Schedules at Appendices 5 and 6 (both exempt).

6.18 To date, THFC have reached agreement with 34 of the 91 parties. Whilst it would have been preferable to reach agreement with all parties, given the number of parties affected this has not been possible. This is despite THFC undertaking a thorough engagement process and there being a 7 month negotiation period.

6.19 It is not feasible to extend the amount of time allowed for negotiation with all affected parties, in an attempt to reach an agreement, as THFC's development timetable and business case requires that the new stadium is completed in the summer of 2018, so that THFC only have to play away from White Hart Lane for one season. To meet this deadline THFC must secure all the necessary funding by early 2016. To secure the funding THFC need to ensure that all injunctable rights have been released through appropriate negotiated agreements or by way of the recourse to the Section 237 powers before they will provide funding.

6.20 It is highly likely that some affected owners will seek or at least threaten injunctive relief, therefore Officers recommend utilising the Council's Section 237 powers.

- 6.21 Consideration 2: The use of statutory powers will facilitate the carrying out of the Development;
- 6.22 As explained above, THFC will not be able to implement the development or secure the necessary development financing for the revised NDP whilst there remains a risk that affected owners could prevent the development by seeking injunctive relief.
- 6.23 THFC has confirmed and Council officers agree that the revised NDP 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 way of the Section 237 provisions.
- 6.24 Therefore, the Council may be satisfied that the requirements of Section 226<sup>1</sup> are satisfied as the acquisition will clearly facilitate the development of the THFC site.
- 6.25 As regards Section 233<sup>2</sup> the Council may be satisfied that its requirements have been met as the revised NDP scheme complies in all material respects with the Council's Development Plan and both the SRF and AAP.
- 6.26 Consideration 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;
- 6.27 The AAP is being prepared to ensure that the scale of development and change proposed for Tottenham through to 2026 and beyond is positively managed and guided by a planning framework. It also ensures that investment decisions meet the aspirations of the local community and the Council for the area as a whole, as well as specific places and locations within it. The AAP sets the following vision for north Tottenham:
- "North Tottenham will be transformed into a mixed and sustainable community and new leisure destination for London - a place where people want to live, work and visit."*
- 6.28 This vision also recognises the importance of development on the THFC site in meeting the vision for the area:
- "With the Tottenham Hotspur FC development scheme serving as a catalyst for wider area change, there will be a substantially improved local centre with a balanced mix of high quality homes, jobs, community and leisure facilities"*
- 6.29 The policies and site requirements set out in the AAP, ensure that any development on this site will contribute to the promotion and improvement of the economic, social or environmental well-being of the area.

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<sup>1</sup> Section 226 of the Town and Country Planning Act 1990 will be satisfied if in summary, that the acquisition would facilitate the carrying out of development and that the development in question would contribute to the economic, social or environmental well-being of the area.

<sup>2</sup> Section 233 of the TCPA 1990 authorises the disposal of land by a Council (at the best consideration that can reasonably be obtained) that has been acquired for planning purposes providing the Council is satisfied that the disposal is expedient to secure the best use of the land or the carrying out of the development which it appears to the Council is needed for the proper planning of the area.

6.30 The revised NDP application is due to be considered by the Council's Planning Sub-Committee on the 16<sup>th</sup> December. The Planning Sub-Committee will assess the public benefits of the scheme, which include:

- A new "world class" 61,000 seat stadium capable of hosting a variety of major sporting and non sporting events, with improved safety, whilst attracting a significant number of additional visitors to the area
- A new 180 bedroom hotel with an additional 49 serviced apartments
- A new multi-use building, 'The Tottenham Experience', comprising the club megastore, museum and other visitor attractions
- A Sports Centre (Class D2) with the aspiration for this to focus on extreme sports building including the potential for the world's highest climbing wall and one of its deepest dive tanks
- The creation of a leisure/sports focussed 7 day a week destination with an international profile
- A package of measures including training secured by s106 to maximise the job opportunities for local people in construction and the operation of the proposed facilities
- A new high quality public realm in and surrounding around the development including a new multi use public square.
- New D1 space intended for use as a community health centre
- The restoration of the Grade II Listed Warmington House and the repair of nine listed buildings within the site boundary so as to safeguard and secure future use of the retained heritage assets
- The construction of 585 new homes
- 890 construction jobs and 820-1030 additional jobs

6.31 It is the Officers' view that, the Cabinet should consider that the revised NDP is in the public interest, should Planning Sub-Committee resolve to grant planning permission at its meeting on the 16<sup>th</sup> December.

6.32 It is clear that the requirements of Section 226(1A) of the Act will be fulfilled because:

- the regenerative benefits of the revised NDP will lead to the improvement of the economic well-being of the area;
- the community benefits offered by the revised NDP will lead to the improvement of the social well-being of the area; and the
- the improved public realm and increased east-west connectivity, coupled with the benefits of an extended Controlled Parking Zone ("CPZ") and increase in the use of public transport offered by the revised NDP will lead to the increased environmental well-being of the area.

6.33 *Consideration 4: The benefits of the Development could not be achieved without giving rise to the infringements of the identified rights.*

6.34 The benefits arising from the NDP 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 it does not infringe the identified rights to light whilst still meeting these aspirations.

- 6.35 THFC would not bring forward a new stadium nor would the Council support such a scheme that did not meet these aspirations. Therefore, the practical reality is that no development would be brought forward if the proposed design was compromised by claims relating to rights of light or other private rights. It is likely that the public benefits arising from the revised NDP can only be achieved through reliance upon Section 237.
- 6.36 *Consideration 5: Is it in the public interest that the development is carried out?*
- 6.37 Officers believe that there is a compelling public interest case in the development being carried out and the prospects of the revised NDP being delivered are significantly increased by the application of Section 237.
- 6.38 *Consideration 6: Is the public interest to be achieved proportionate to the private rights being infringed by the action of Section 237?*
- 6.39 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 the 1<sup>st</sup> Protocol (peaceful enjoyment of possessions).
- 6.40 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 1<sup>st</sup> 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.
- 6.41 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.
- 6.42 Therefore, in deciding whether to proceed with the recommendations, Members need 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 the 1<sup>st</sup> Protocol 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.

- 6.43 Human rights issues arise in respect of the proposed arrangements. Members must balance the public benefits that will arise from the use of statutory powers against the interference with the private interests. Members must consider whether this interference is necessary and proportionate.
- 6.44 The public benefits that will stem from the Council's statutory powers are summarised above.
- 6.45 When assessing the interference with private interests it is important to recognise that the impact of the proposed development in daylight and sunlight terms will be fully assessed as part of the planning process and will be considered by the Council's Planning Sub-Committee when it considers the planning application of the 16th December 2015.
- 6.46 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. As mentioned above, 34 of the affected third parties have negotiated acceptable compensation and have completed a deed of release.
- 6.47 Against this background, officers' views are that, should the revised NDP secure the positive resolution to grant planning approval by the Planning Sub-Committee on the 16th December 2015, then the interference with the private rights is proportionate and necessary in this instance when assessed against the substantial public benefits. Officers also take the view that the scheme of compensation proposed will mitigate any infringement of those private rights.
- 6.48 In light of all the above considerations, Officers recommend that the Cabinet resolves to exercise its powers under Sections 227 and 233 in order that Section 237 may be applied in connection with the THFC Site and the revised NDP.

#### Compensation Entitlement

- 6.49 As previously mentioned, the effect of Section 237 is to translate an injunctable right where rights (including right of light) have been infringed into an entitlement to compensation only. Compensation is based upon the compulsory purchase principles of diminution of value. The amount of compensation payable will be based on the reduction in the value of the respective property.
- 6.51 The Council owns a number of properties whose rights of light will be infringed and as a result is entitled to compensation. The Council properties affected are listed at Appendix 6 (exempt). The Council commissioned Deloitte Real Estate ('Deloitte') to: (i) verify the model produced by THFC's Rights of Light surveyors ('GIA') which identified the affected properties; (ii) to agree the method of calculating the right of light compensation and explore, in the alternative for that site, possible mitigation measures for the Northumberland Park School; and (iii) verify the compensation amount payable to the Council.

#### Northumberland Park School and mitigation measures

- 6.52 Deloitte were asked to inspect Northumberland Park School, to not only determine the level of infringement but also to determine whether mitigation measures could be introduced to reduce light loss on the site. The inspection has concluded that the majority of the light loss is to halls, offices and communal areas as opposed to class rooms. The only reasonable mitigation measure would be to put additional windows in the affected areas.
- 6.53 Following Deloitte's inspection it has been determined that it would not be feasible, due to construction, disruption and cost to add additional windows into any affected areas on the school.

#### Council Compensation

- 6.54 Deloitte are working with Council offers to negotiate the compensation entitlement with THFC. It is anticipated to be in the range of £350, 000.00-£400,000.

#### Council tenants and leaseholders

- 6.55 A number of secure Council tenants and leaseholders living in Council properties affected have also been offered compensation. GIA has sent letters to affected tenants and leaseholders and has, where possible, undertaken surveys of the properties involved. All those affected have been offered free independent legal advice together with commercial advice from rights of light specialists. Surgeries for both the tenants and leaseholders affected were held on October 28<sup>th</sup> and November 12<sup>th</sup> with representatives from both THFC and the Council present. At the surgeries, GIA explained the infringement, the method for calculating compensation and offered compensation to those willing to accept compensation and release their rights. An independent surveyor and a legal advisor were, at the expense of THFC, available at these events to advise tenants and leaseholders.

#### Engagement and negotiation

- 6.56 Appendices 5 and 6 (exempt) detail the level of engagement and negotiation that THFC have undertaken with each affected tenant and leaseholder, as well as the third party interests.
- 6.57 Members are asked to note that THFC have written to the Council to confirm that they will honour all compensation offers to parties who have accepted offers, but have not finalised the necessary documentation ahead of the sale and leaseback of the THFC Site.

#### Sale and leaseback arrangements

- 6.58 Should the Cabinet agree to the acquisition of the THFC Site for planning purposes as set out in this report, the terms of the acquisition from and the leaseback to Meldene Limited shall (subject to the terms of the delegation in recommendation (v) above) be based on the Heads of Terms attached at Appendix 2 (exempt).

## **7.0 Contribution to strategic outcomes**

- 7.1 The above recommendations are key to delivering the revised NDP in a timely and efficient way. The revised NDP and the circa £600m private sector investment it brings to north Tottenham, supports the Council in the delivery of two of its corporate plan priorities - Priority 4: Drive growth and employment from which everyone can benefit; and Priority 5: Create homes and communities where people choose to live and are able to thrive.
- 7.2 In terms of growth and employment, as well as the significant number of new jobs the revised NDP directly delivers and the jobs created during the construction phase, event and non-event day activities within the scheme support a large number of businesses and entrepreneurs within the north Tottenham area. Importantly, the revised NDP will also play a catalytic role in the delivery of housing growth throughout the north Tottenham area. The confidence and the perception change this substantial private sector investment will deliver is crucial to unlocking the first phases of the Council's High Road West and Northumberland Park regeneration schemes.

## **8.0 Statutory Officers comments (Chief Finance Officer (including procurement), Assistant Director of Corporate Governance, Equalities)**

### Finance and Procurement Comments

- 8.1 The acquisition and disposal referred to in this report will be at a consideration of £1 and thus there will be no net cost to the Council in undertaking this transaction. However, for tax purposes the site has been externally valued by Wilkshead and Eve at £13,060,000.
- 8.2 The Council have commissioned Grant Thornton to provide specialist tax advice on the sale and leaseback transaction to ensure that the Council incurs no tax liability due to the exchange. The advice from Grant Thornton of how the transaction should be structured and worded has been incorporated within the documents included with this report. Therefore, the Council will not incur any costs due to the recommendations within this report provided it follows the process set out in the Heads of Terms. The transaction should only progress once all tax implications have been resolved. The cost of this advice has been recharged to Tottenham Hotspur Football Club.
- 8.3 Any subsequent compensation claims for Rights of Light issues will be funded by THFC and the Council is protected in this respect by an indemnity agreement with THFC (signed 25<sup>th</sup> June 2012), the indemnity agreement also covers any tax the Council becomes liable for and professional fees. The Council itself would expect to receive in the region of £350, 000.00 a £400,000.00 in rights of light compensation, this income can be used to support wider Council priorities.
- 8.4 The delivery of the revised NDP is dependent on the Council using its s237 powers on this occasion and in doing so the Council would expect to facilitate further regeneration and support Priority 4 objectives around economic growth.

### Legal Comments

- 8.5 Section 246 of the Act defines “acquisition” and “appropriation” – the former being the acquiring of land for planning purposes and the latter being a decision by the Council to appropriate land it either owns or has acquired for planning purposes.
- 8.6 Section 227 of the Act authorises the Council to acquire land for planning purposes. To do so the Council would need to be satisfied that the circumstances set out in Section 226 of the Act are met – in summary, that it would facilitate the carrying out of development and that the development in question would contribute to the economic, social or environmental well-being of the area.
- 8.7 Section 233 of the Act authorises the disposal of land by a Council (at the best consideration that can reasonably be obtained) that has been acquired for planning purposes providing the Council is satisfied that the disposal is expedient to secure the best use of the land or the carrying out of the development which it appears to the Council is needed for the proper planning of the area.
- 8.8 Section 237 operates by converting the right of an owner of an affected property from an injunctionable right into an entitlement to compensation. The underlying purpose of the section is to ensure that development is not prevented by third parties whilst at the same time ensuring that they are properly and fairly compensated. Compensation is assessed using compulsory purchase compensation principles based on the diminution of the value of the affected property as a result of the interference with the right.
- 8.10 The protection afforded by Section 237 will apply both to the Council, were it to undertake the development, and also to any party deriving title to the land from the Council. Therefore, if the Council acquires the THFC Site for planning purposes or appropriates it and subsequently disposes of it, the risk of an affected property owner, tenant or occupier seeking an injunction to prevent a scheme going ahead based on the infringement of a right to light (or any other right) will be removed.
- 8.11 For Section 237 to come into effect the Council must resolve: (i) To acquire the THFC Site under Section 227; and (ii) That the requirements of Section 233 were met.
- 8.12 The Council has the power under Section 227 of the Act to acquire the THFC Site. The THFC Site will be acquired for planning purposes. It is proposed that immediately on acquisition the Council grants a long lease back to THFC. This will be a disposal falling with the provisions of Section 233 of the Act.
- 8.13 Section 233 requires that if the Council disposes of the THFC site then it must secure the best use of that land or secure the erection, construction or the carrying out of any building works. The Council must also secure best consideration otherwise the consent of the Secretary of State is required. It is proposed that the acquisition and disposal will be in consideration of the leaseback and the transfer with no cash consideration however, a valuation of

the THFC Site has been carried out for the purposes of Stamp Duty Land Tax, Land Registry fees and Value Added Tax. THFC will be fully indemnifying the Council in respect of these liabilities as part of the sale and leaseback.

- 8.14 The Council has received independent expert valuation advice confirming that the disposal of the THFC Site will be at the best consideration that can reasonably be obtained and therefore the consent of the Secretary of State to the disposal is not required.
- 8.15 As stated in this report the provisions of Section 237 will only apply to the revised NDP if it is done in accordance with planning permission however this will not affect any rights belonging to statutory undertakers.
- 8.16 The Cabinet is asked to note that the Housing and Planning Bill is currently progressing through Parliament. This contains Clause 137 which will (if enacted) lead to the repeal of Section 237 and its replacement with a similar provision making available Section 237 powers to a wider number of public bodies. It is anticipated that transitional provisions will also be enacted to “save” any resolutions made in order to give effect to Section 237. Notwithstanding this, it is felt that the Council should resolve that its resolutions under Sections 227 and 233 are intended to attract the application not only of Section 237 but also any replacement whether Clause 137 or otherwise.

### Equalities

- 8.17 The Council has a public sector equality duty under the Equalities Act (2010) to have due regard to:
- eliminate discrimination, harassment and victimisation of persons protected under s4 of the Act. These include the characteristics of age, disability, gender reassignment, marriage and civil partnership, pregnancy and maternity, race, religion or belief, sex (formerly gender) and sexual orientation);
  - advance equality of opportunity for protected characteristics; and
  - foster good relations between groups who share a protected characteristic and those that do not share that characteristic.
- 8.18 An EqIA has been completed in relation to this decision and can be found at Appendix 9. The EqIA identifies that the revised NDP is anticipated to have significant social and economic benefits for the local area and will have an overall positive impact for communities in the area. Given the profile of the area this will include a large proportion of those with the characteristics protected under the Equalities Act.
- 8.19 Some residents will be affected by the development in terms of their right to light. Although the profile of the area suggests the affected parties may include a large proportion of those with the protected characteristics, it is not anticipated that the proposal will impact on residents in the protected groups disproportionately to other groups of residents. The affected parties have been engaged throughout the consultation process and offered independent information and support. The decision to appropriate and leaseback the site would mean affected parties would lose their injunctable right but 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.

## **9.0 Use of Appendices**

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

Appendix 2: Heads of Terms for Sale and Lease-back – S.237 (this document is exempt).

Appendix 3: Plan showing properties with potentially affected prescriptive rights (this document is exempt)

Appendix 4: Schedule of other rights (this document is exempt).

Appendix 5: Schedule listing private properties with potentially affected prescriptive rights (this document is exempt).

Appendix 6: Schedule listing council owned properties with potentially affected prescriptive rights (this document is exempt).

Appendix 7: Equalities Impact Assessment

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

10.1 The following background papers are relevant to this report:

- 12<sup>th</sup> February 2013 Cabinet Report- New Football stadium and Associated Development at Tottenham- Land Appropriation and Agreement;
- 20<sup>th</sup> March 2012 Cabinet Report- New Football Stadium and Associated Development at Tottenham, Proposed Northumberland Development Project Compulsory Purchase Order 2012;
- 20<sup>th</sup> March 2012 Cabinet Report-Northumberland Development Project Tottenham – Land Agreement between THFC and the Council;
- The emerging draft Tottenham Area Action Plan
- The Strategic Regeneration Framework

10.2 Exempt information

- Heads of Terms for Sale and Lease-back – S.237.
- Plan showing properties with potentially affected prescriptive rights
- Schedule of other rights.

- Schedule listing private properties with potentially affected prescriptive rights.
- Schedule listing council owned properties with potentially affected prescriptive rights.

This information is exempt by virtue of one or all of the following paragraphs of Schedule 12A to the Local Government Act 1972 (as amended) namely:

- 1 Information relating to any individual.
- 2 Information which is likely to reveal the identity of an individual.
- 3 Information relating to the financial or business affairs of any particular person (including the authority holding that information).