



# WNDC Board Report

## Report by Executive Team

Paper Reference: 2011-07-01-01

Agenda Item: 1

13 December 2011

**Subject:** Avon Nunn Mills, Northampton - Compulsory Purchase Order 2012

**Advice:** That the Board:

1. **Authorise** the making of a Compulsory Purchase Order (CPO), to be known as the West Northamptonshire Development Corporation (Avon Nunn Mills, Northampton) Compulsory Purchase Order 2012 ('the Order') under Section 142 of the Local Government Planning and Land Act 1980 and the Acquisition of Land Act 1981 for the acquisition of land and the creation of rights within the area described in this report and shown edged red on the Plan at Appendix One of this report, being land and rights which are needed to facilitate the comprehensive regeneration of the land subject to the Order, which falls within the Corporation's area, as described in this report.
2. **Authorise** the Chairman, in consultation with the Chief Executive, subject to him being satisfied that the appropriate legal agreement and protections are in place, to:

- 2.1 Finalise the precise extent of the land and new rights to be acquired by the CPO and agree the Avon Nunn Mills CPO Plan;
- 2.2 Take all necessary steps (prior to and after the application of the Corporation's Seal to the Order) to secure the making, confirmation and implementation of the Order including (but not limited to):
  - a. finalising the Statement of Reasons;
  - b. submitting the draft Order, including the draft Order plan, to the National Unit for Land Acquisition and Disposal for technical review prior to making the Order;
  - c. the publication and service of all notices that may be required;
  - d. the placing of site notices and press notices, including (but not limited to) those arising from the making of the Order, the holding of any Public Inquiry, the confirmation of the Order (should confirmation be authorised) and the acquisition of land and rights;
  - e. the submission of the Order to the Secretary of State for confirmation and the taking of such steps as may be necessary to secure the confirmation of the Order;
  - f. the presentation of WNDC's case at any Public Inquiry, including the preparation and submission of evidence as is necessary to any public inquiry or other procedure which is convened to consider objections to the Order, including enlisting the assistance of external consultants, lawyers and Counsel to assist in the preparation and presentation of evidence at any inquiry.
- 2.3 Confirm the Order in the event that no objections are received against it and the Secretary of State confirms that the Corporation may so authorise.
- 2.4 Request confirmation of the Order with modifications if it appears expedient for the confirmation of the Order.
- 2.5 Negotiate terms for the acquisition of the interests subject to the Order and the acquisition of those interests by agreement.

- 2.6 Once the Order becomes operative, to serve notices to treat and notices of entry under the Compulsory Purchase Act 1965 and/or execute general vesting declarations under the Compulsory Purchase (Vesting Declarations) Act 1981.
- 2.7 Approve agreements with landowners and others having an interest in the area to be subject to the Order setting out the terms for the withdrawal of objections to the Order.
- 2.8 If the question of compensation is referred to the Upper Tribunal to take all necessary steps in relation thereto.
- 2.9 Authorise the making and serving of “stopping up orders” under Section 247 of the Town and Country Planning Act 1990, and/or any necessary highway diversion and closure orders and traffic regulation orders, including enlisting the assistance of external consultants, lawyers and Counsel to assist in the same.
- 2.10 Authorise, where necessary, interference with rights as set out in this report.
- 2.11 Authorise and agree to commit to compensation payments as appropriate in accordance with the CPO Compensation Code.

**Summary:**

The Avon and Nunn Mills sites are at the forefront of WNDC’s plans to regenerate Northampton’s waterside. Situated next to the River Nene on a new gateway into the town centre, they are an ideal location for high quality office and residential development.

WNDC has been working with its partners to secure a high quality mixed use scheme that will transform this brownfield site, which includes the former Nunn Mills power station and the site of the former Avon Cosmetics factory.

A significant amount of progress has already been made to ensure the necessary infrastructure will be in place to support redevelopment. The Board received reports at its meeting in September 2011 and November 2011 that provided an update with regard to the Avon Nunn Mills project. Following the failure of Persimmon Homes to agree the final draft of the Collaboration Agreement, which required the use of WNDC’s powers of compulsory purchase only in relation to the land in unknown ownership, there is now an urgent need to progress a revised CPO

strategy. The Corporation is, therefore, recommended to make wider use of its powers of compulsory purchase. Direct intervention by WNDC is now essential to bring forward these sites for development. Professional advice has been provided by CB Richard Ellis and SNR Denton on a CPO strategy to secure the comprehensive regeneration and development of the Avon Nunn Mills area.

## 1.0 **Background**

- 1.1 Development proposals for the Avon Nunn Mills site predate the establishment of WNDC. The Avon Nunn Mills site is one of Northampton's five "key" regeneration projects. The objective is to deliver a comprehensive mixed-use development on this brownfield site which sits partly within the Northampton Waterside Enterprise Zone.
- 1.2 A land ownership plan of the site is attached at Appendix Two. The principal landowners are Avon Cosmetics Limited, George Wimpey East Midlands Limited, Persimmon Homes Limited, Homes and Communities Agency and the Corporation. In addition to the main landowners Bisney Oriental Ltd own the freehold of the Avon building and Network Rail own the disused railway line that runs through the site. Northampton Borough Council owns land required to deliver the new Nunn Mills Road. A key impediment to delivery of the entire development is a strip of land in unknown ownership that is required to deliver the road infrastructure to access the site. As it stands the position of the land in unknown ownership creates a major constraint to the development of the site.
- 1.3 The Board previously considered and agreed proposals to enter into a Compulsory Purchase Order (CPO) in March 2008, July 2010, September 2010 and July 2011. The previously authorised Compulsory Purchase Order (CPO) was subject to completion of a binding Collaboration Agreement with all land owners and a binding Indemnity Agreement between Avon Cosmetics Ltd and WNDC regarding costs of pursuing a CPO. The CPO that has been authorised would, if confirmed, enable the land in unknown ownership to be acquired by the Corporation and for the road infrastructure to be provided.
- 1.4 Under the proposed Collaboration Agreement all parties agreed in principle to make the land in their ownership available where it is required for the delivery of the new Nunn Mills Road. The agreement also bound parties not to object to or make any claims as a result of a CPO to deliver

the road. The agreement contained a number of 'Unresolved Matters' that needed to be resolved and agreed before the land in unknown ownership would be vested by the Corporation. These 'Unresolved Matters' included the sharing of costs for provision of strategic infrastructure between the landowners and the form of development for the site.

- 1.5 The Corporation has been progressing proposals for the new Nunn Mills Road that will provide access to the site. Planning permission for the road was granted on 6 December 2011.
- 1.6 A final draft of the Collaboration Agreement was circulated to all parties for approval and confirmation that they would sign on 23 September 2011. All landowning parties, with the exception of Persimmon, have indicated a willingness to sign the Collaboration Agreement. As a result of the position adopted by Persimmon Homes the Collaboration Agreement cannot be progressed.
- 1.7 In order to secure the comprehensive regeneration of these key sites at the heart of the Northampton Waterside Enterprise Zone a revised strategy, making full use of WNDC's CPO powers, needs to be progressed.

## **2.0 Compulsory Purchase – Options**

- 2.1 SNR Denton and CB Richard Ellis have been appointed to advise the Corporation on options for taking forward the CPO in the absence of the Collaboration Agreement. The following options have been tested and the findings reported to the Corporation's Board on the 15 November 2011 :

Option 1 – Promote a CPO of the road corridor following signing of a Collaboration Agreement by the land owners

Option 2 – Promote a CPO of the road corridor in the absence of a signed Collaboration Agreement

Option 3 – Promote a CPO of the development land to the north of the railway

Option 4 – Promote a CPO of the development land to the north of the railway and sufficient of the land to the south of the railway to allow for construction of the proposed Nunn Mills road and a footbridge over the railway.

2.2 As a result of the failure to sign the Collaboration Agreement, Option 1 is undeliverable. Option 2 would remove the constraint of the unknown ownership, but does not secure any control on development or cost contribution and so should be discounted. Options 3 and 4 provide a strong case for the use of compulsory purchase powers. The advantage of Option 4 is that it provides linkage across the railway therefore unlocking the full development potential of the site. The recommendation from CBRE is that, in terms of securing compulsory purchase of the land and maximising development opportunities, Option 4 is the preferred option. It is for this option that the plans for this CPO have been developed.

2.3 In addition to the above there is a further option, which is to do nothing. This would result in the site remaining derelict and underused for several years to come and, therefore, has been rejected.

### 3.0 CPO - Process and Programme

3.1 A number of supporting documents have been prepared in order to help inform the Board in consideration of the resolutions it has before it. These include a draft Statement of Reasons, Draft CPO Plan and Programme.

#### *Statement of Reasons*

3.2 A draft Statement of Reasons to support the Order has been prepared and is attached at Appendix Three. It specifically sets out the Corporation's reasons for making the Order to facilitate the comprehensive redevelopment of the Avon Nunn Mills site. It describes in detail the nature of the site, the planning history and current policy context, the implications of developing the road and the wider site and the need for compulsory purchase powers.

3.3 The draft Statement of Reasons in support of the making of the Order will be finalised and agreed by the Chairman and Chief Executive of the Corporation and a copy served on each person with an interest in the land.

#### *Draft CPO Plan*

3.4 The draft CPO plan is shown in Appendix One. This has been drawn up based on Option 4. This plan once agreed will form the basis for the CPO Order Map and accompanying schedule.

## *Programme*

3.5 A programme has been developed for bringing forward the Order on the basis shown in Option

4. This would cover the following –

- Board Resolution to commence CPO based on Option 4 – 13 December 2011
- Land Referencing and Requisitions for Information – December 2011-Jan2012
- Order, the Draft Order Map and Order Schedule submitted to National Unit for Land Acquisitions and Disposals for technical review – January 2012
- Making CPO – February 2012
- Objection period closes – March 2012
- Public Inquiry held – May 2012
- Secretary of State Decision – November 2012
- General Vesting Declaration made – December 2012
- Possession – March 2013

## 4.0 **Financial Implications**

4.1 There are two key areas of financial exposure in progressing the Order :

- The cost of progressing the CPO process.
- The quantum of compensation payment to which affected parties will be entitled following compulsory purchase, and about which the Corporation has taken advice from CBRE.

4.2 The most significant potential cost is the possible compensation payable if an owner is identified for the land previously thought to be in unknown ownership. Under the Collaboration Agreement this would have been indemnified through an insurance policy provided by Avon Cosmetics. It is recommended that the land be acquired through a General Vesting Declaration with an indemnity being provided through an insurance policy or by recognising that funds would need to be made available should the unknown owner become known. A person wishing to claim

compensation must make a reference to the Lands Tribunal within 6 years from the date on which the claimant “first knew, or could reasonably be expected to have known” of the vesting of title in the authority.

- 4.3 Board should be aware that, in light of the advice received from the Corporation’s professional advisors on the possible maximum compensation payable, the Corporation has the financial capacity to acquire all of the interests which would be subject to compulsory acquisition. As with any commitment of WNDC capital funding this will be subject to authorisation by DCLG, which will be secured prior to the Order being made.

## 5.0 Legal Implications

### Compulsory Purchase Order - Corporation’s Powers

- 5.1 The Corporation’s powers of compulsory acquisition are set out in the Local Government, Planning and Land Act 1980. Section 136(3) of the 1980 Act empowers the Corporation to acquire, hold, manage, reclaim and dispose of land and to carry out a variety of incidental activities, for the purpose of achieving its objectives which are:

- bringing land and buildings into effective use;
- encouraging the development of existing and new industry and commerce;
- creating an attractive environment;
- ensuring that housing and social facilities are available to encourage people to live and work in the area.

- 5.2 Section 142 of the 1980 Act provides for the acquisition of the following land:

- land in the Urban Development Area;
- land adjacent to the area, which the Corporation requires for the provision of services in connection with the discharge of its functions; and
- land, whether or not adjacent to the area, which the Corporation requires for the provision of services in connection with the discharge of its functions in its area.

- 5.3 The Corporation needs to resolve formally to exercise its compulsory purchase powers before it can make a CPO. The final decision on the CPO rests with the Secretary of State who will decide whether to confirm the CPO having considered the justification for the CPO.
- 5.4 If there are objections to the CPO, this consideration will take place following a public inquiry, hearing or written representation procedure unless those objections are withdrawn. The Corporation must successfully show that there is a compelling case in the public interest for the compulsory acquisition of the land subject to the CPO.
- 5.5 The Corporation has a broader remit with regards to the use of compulsory acquisition powers than that of local authorities. This is described in Circular 06/2004 which explains that compulsory purchase powers available to Urban Development Corporations are expressed in wide and general terms. In relation to pursuing a wider CPO at Nunn Mills, the Corporation does not need to be facilitating a scheme that has already received planning permission. However, there is a need to demonstrate that the land assembly then achieved will facilitate the regeneration of the site.
- 5.6 In addition to being satisfied that there is a compelling case in the public interest, the Secretary of State, when looking at CPOs made by Urban Development Corporations, considers :
- whether the Corporation has demonstrated the land is in need of regeneration;
  - what alternative proposals (if any) have been put forward by the owners of the land or other persons for regeneration;
  - whether the regeneration is on balance more likely to be achieved if the land is acquired by the Corporation;
  - the recent history and state of the land;
  - whether the land is an area for which the Corporation has a comprehensive regeneration scheme; and
  - the quality and timescale of both the UDC's regeneration proposals and any alternative proposals.

## **Interference with Rights**

- 5.7 Paragraph 5 of Part III of Schedule 28 to the 1980 Act provides that where land is compulsorily acquired by the Corporation all private rights of way and rights of laying down, erecting, continuing or maintaining any apparatus on, under or over the land (excluding those of a statutory undertaker vested in them for the purpose of carrying on their undertaking) shall be extinguished, and any such apparatus shall vest in the Corporation.
- 5.8 Paragraph 6 of Part III of Schedule 28 to the 1980 Act provides that where land is vested in the Corporation by the Secretary of State or acquired compulsorily by the Corporation, any building work carried out on such land is authorised if it is done in accordance with planning permission, whether by the Corporation or any other person even though it involves interference with an easement, servitude, liberty, principle, right or advantage annexed to land and adversely affecting any other land, including any natural right to support (excluding those rights of a statutory undertaker vested in them for the purpose of carrying out of their statutory undertaking).
- 5.9 The effect of Part III of Schedule 28 to the 1980 Act is that any existing rights, which could prevent the regeneration proposals from proceeding, can be overridden. This does not remove any legitimate entitlement of those who have the right to claim compensation. If a person feels that they are not being offered a fair amount of compensation in respect of the right that they hold, then the matter may be referred to the Upper Tribunal for a decision. However, this would not prevent the regeneration of the Order Land proceeding.

## **Human Rights Considerations**

- 5.10 The Human Rights Act 1998 incorporated into domestic law the European Convention on Human Rights (“ECHR”). The ECHR includes provisions in the form of Articles, which aim to protect the rights of the individual. Section 6 of the Human Rights Act 1998 prohibits public authorities from acting in a way which is incompatible with rights protected by the ECHR.
- 5.11 The Statement of Reasons covers the Human Rights implications of taking forward the Order. The ECHR places direct obligations on public bodies such as the Corporation to demonstrate that the use of compulsory purchase powers is in accordance with the law, is in the public interest, and that the use of such powers is proportionate to the ends being pursued. Attention is

drawn to the section on the Human Rights Act in the draft Statement of Reasons attached at Appendix Three.

## 6.0 Conclusions

- 6.1 The development proposals for the Avon Nunn Mills site deliver key objectives for the local community, local partners, WNDC and Government. The benefits to the area resulting from the development of this site are set out in the draft Statement of Reasons. There have been longstanding proposals for development of these sites that have failed to come to fruition. Without the use of the Corporation's powers of compulsory purchase to facilitate the construction of the spine road the regeneration and redevelopment of this site, the benefits to the area will not be realised. There is, therefore, a compelling case in the public interest for the compulsory acquisition of interests in the land.
- 6.2 The Corporation intends to submit the Order, the Draft Order Map and Order Schedule to the National Unit for Land Acquisitions and Disposals for a technical review of the draft documents. Any comments received are without prejudice to future consideration by the Secretary of State of the submitted Order.
- 6.3 The Corporation will continue to seek to purchase interests by agreement throughout the compulsory purchase process. Efforts to acquire the land and property interests by agreement will be continued after the Board's resolution up to the point at which it becomes necessary to vest land in the Corporation following confirmation of the Order to maintain the programme for the delivery of the comprehensive regeneration of Avon Nunn Mills.
- 6.4 Assuming that the Board approves the recommendations outlined in this report the Chairman, in consultation with the Chief Executive, will make any further amendments necessary to the draft Statement of Reasons and draft CPO Plan. The Corporation will then prepare the Order, the Order Schedule and Order Map.

## Appendices

**Appendix 1 – Draft CPO Plan**

**Appendix 2 – Landownership Plan**

Appendix 3 – Draft Statement of Reasons