



## CABINET REPORT

<b>Report Title</b>	<b>Sixfields – Development Agreement</b>
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### AGENDA STATUS: PUBLIC

<b>Cabinet Meeting Date:</b>	5 August 2009
<b>Key Decision:</b>	Yes
<b>Listed on Forward Plan:</b>	Yes
<b>Within Policy:</b>	Yes
<b>Policy Document:</b>	No
<b>Directorate:</b>	Finance & Support
<b>Accountable Cabinet Member:</b>	Cllr D Perkins
<b>Ward(s)</b>	St James

### 1. Purpose

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1.1 The purpose of this report is to seek Cabinet authority to:

- (a) proceed with the detailed negotiation of a development agreement affecting land within the Council's freehold ownership at Sixfields Stadium Complex presently let to Northampton Town Football Club Limited (NTFC) in combination with other land owned by Homes & Communities Agency (HCA); and
- (b) to agree, in principle, the Council's approach to obtaining value for its property interests.

### 2. Recommendations

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2.1 That Cabinet supports this Council entering into a development agreement with Homes and Communities Agency (HCA), Northampton Town Football

Club Limited (NTFC) and a development partner to facilitate the development of land at Sixfields for a scheme involving uses that will

- (a) not conflict with preserving and enhancing the commercial vitality of the Town Centre,
  - (b) will ensure that the stadium itself continues to be used for Association Football and other uses described under the existing Lease referred to at 3.1.1 and
  - (c) will ensure that replacement athletics facilities are built to UK Athletics Competition Standard for track and field, within Northampton prior to any redevelopment of the existing facilities.
- 2.2 That Cabinet supports the principle that this Council should agree, under the terms of a development agreement with the parties referred to at 2.1 above, to the transfer of its freehold interest in part (but not the whole) of the Sixfields Stadium, prior to physical development taking place on that land. However, the transfer of any part should only occur in circumstances where the Council is first satisfied that there are sufficient legal safeguards and financial guarantees to protect the Council's position.
- 2.3 That Cabinet supports the principle that the investment returns to each party to the agreement should be based on their respective capital contribution to the scheme. The contribution by NBC and HCA will be in the form of freehold land and it is accepted that the actual value of the land will be determined by reference to the overall profitability of the development scheme.
- 2.4 That Cabinet delegates to the Director of Finance and Support, acting in consultation with the Portfolio Holder for Finance, authority to approve the detailed terms of a development agreement consistent with the principles set out in this report.
- 2.5 That Cabinet supports in principle, NTFC's aspirations to improve the facilities at Sixfields Community Stadium and Cabinet notes the requests of NTFC for this Council to invest, in the retained Stadium complex, any value generated by the transfer of Council owned land. However, whilst the Cabinet will consider such request it nevertheless resolves not to fetter its discretion as to how it might spend any proceeds arising from its participation in any development agreement.

### **3. Issues and Choices**

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#### **3.1 Report Background**

- 3.1.1 Sixfields Community Stadium is owned freehold by this Council. It is let to Northampton Town Football Club Limited (NTFC), a private for profit company, under the terms of a 150 years lease, dated 13 April 2004. The lease to NTFC is subject to the terms of a Licence agreement dated 17 March 2004, relating to the use of the athletics facilities that form part of the stadium

complex. That agreement with Rugby and Northampton Athletics Association remains valid until 2029.

- 3.1.2 Under the terms of the lease to NTFC the property may only be used for certain limited purposes. In 2004, as part of the “Joint Brownfield Initiative”, this Council transferred adjoining land at Sixfields to English Partnerships (now HCA).
- 3.1.3 NTFC and a development partner have been working together for some time to consider forms of development that may be possible in relation to the stadium and nearby land. Historically, NTFC have sought this Council’s agreement for the development of retail premises at Sixfields, on land forming part of the stadium complex. Discussions were held with Council officers, under previous administrations, about proposals for such a development in the locality. The Council’s present position is that it will strongly oppose any forms of development at Sixfields, or at any other ‘out of town’ location, that could damage the economic viability and growth of the Town Centre.
- 3.1.4 NTFC and their development partner have previously held discussions with HCA about the inclusion of their neighbouring land within a broader scheme. HCA have previously indicated that they may be prepared to transfer land at below full value (or re-invest their potential share of the proceeds of any resulting development in the remaining Sixfields Community Stadium). Crucially, this potential support has been subject to the important proviso that there would have to be clearly demonstrable community benefits from doing so. HCA consider that it is more appropriate for this Council, as local authority, to identify precisely what community benefits it regards as significant and necessary that the Club should provide.
- 3.1.5 NTFC working with their development partner has recently proposed revised alternative schemes of development, that they would like this Council and HCA to support. These take into account the Council’s clear policy stance about protecting and promoting Town Centre activity.
- 3.1.6 NTFC have approached this Council for support for certain schemes. For the likely scheme to have any value for NTFC or its development partner the Council would have to agree to permit the re-development of that part of the Stadium complex that accommodates the athletics facilities. This Council is under no legal obligation to agree to such a request. It would be legitimate for the Council to seek a commercial consideration for agreeing to the transfer of the property interest that has been requested.
- 3.1.7 Depending upon which alternative scheme might be pursued, the development could include other third party owned land or the grant of rights over it.
- 3.1.8 The basis of agreement proposed put forward by NTFC would lead to this Council and HCA entering into binding agreements to transfer their freehold interests in respective land parcels. A development vehicle would be used to act as developer of the agreed scheme. However, that development vehicle would not have any liability or responsibility to carry out works to the retained stadium itself or provide new facilities from there. That responsibility would

rest with NTFC, post completion of the development of the larger development scheme. It is nevertheless accepted, that re-provision within a radius acceptable to this Council of alternative athletics facilities (constructed to UK Athletics Competition Standard) would have to be provided at no cost to this Council as a part of the cost of the overall development, prior to demolition of the existing facilities and prior to the transfer of the Council's legal interest in that land.

- 3.1.9 Under the proposed development basis, NTFC and their partner would be required to put their own equity into the scheme to attract development finance. They would need to charge land under their control as security for debt finance for any scheme.
- 3.1.10 NTFC want this Council to agree to allow the use of land forming the athletics track as loan security, post the construction of alternative athletics facilities elsewhere, but prior to completion of the broader development (and thus also prior to the completion of subsequent improvements to the retained stadium too). As noted at 3.2.4 below, there would be clear risks for this Council in agreeing to this proposed basis, without adequate legal and other safeguards.
- 3.1.11 Under NTFC/ Development partner proposed arrangements, there would be a viability test, post grant of a satisfactory planning permission. The scheme would only proceed if they considered it would generate sufficient return.
- 3.1.12 The viability assessment would necessarily take into specific account the need to also meet the costs of stadium enhancements 3.1.13 below. If the scheme proceeded, there would be a pre-agreed level of developer's profit. This would reflect the costs of project management of the scheme and equity (cash) invested by NTFC and their Development Partner and risk undertaken by those parties.
- 3.1.13 Assuming the scheme made a profit in excess of the level needed to meet the developer's profit, it is proposed by NTFC that the next tranche of profit should be ring-fenced to be applied to the delivery by NTFC of the works/ facilities at the retained stadium – that would, in their view, generate additional community benefits. Under this scenario, the sum involved in the provision of those works/ providing facilities would be agreed by this Council with NTFC at the outset. This proposal by NTFC starts from the base assumption that this Council would be willing to invest most or all of the value generated (from the transfer of its freehold interest in part) in NTFC making improvements to the stadium.
- 3.1.14 Under the suggested proposal put forward by NTFC/ Development Partner any further profit generated from the development scheme in excess of the sums at 3.1.12 and 3.1.13 would be divided between HCA, NTFC and this Council in proportion to the land share, by area, included within the development scheme. There would necessarily be an agreed division of the relevant share of 'excess profit' between NTFC and this Council in respect of the land that had formed the athletics facilities part of the stadium (reflecting respective positions as landlord and tenant).

## 3.2 Issues

- 3.2.1 The basis of agreement sought by NTFC would require this Council to transfer an interest in land at nil value to facilitate the scheme (albeit subject to the possibility of some payment - if the profit from development scheme was in excess of a certain threshold).
- 3.2.2 This transfer basis is, from the perspective of NTFC, a key factor in the scheme being able to proceed. It would represent a disposal of land at below market value. The investment value of the Council's land interest at present is modest, being subject to a lease with 145 years outstanding at a peppercorn rent. However, if the Council were to agree to transfer part of its freehold interest to facilitate development, the value should be judged in relation to a negotiated share of the additional value that would be created from that development. This is difficult to estimate in the absence of a fully worked scheme with more detailed costs than have been established at this stage. Nevertheless, it is likely to be a significant sum. Cabinet would, as matter of policy, be required to consider and approve any proposed disposal at less than full market value.
- 3.2.3 NTFC have initially indicated a range of additional community benefits that they consider could be provided, if the Council were to support the scheme in the way they have sought. There is inevitably a judgement to be made about the value these facilities might provide to people of the Town. NTFC has also expressed a wish to work collaboratively with the Council, to explore ways in which mutual benefits might be obtained, for instance by this Council having a more direct involvement in the provision or support for services to the public delivered at the Stadium.
- 3.2.4 Under the proposed basis put forward by NTFC/ Development Partner, there is the risk that if the development does not in practice proceed in line with any pre-agreed financial model, it may not generate sufficient profit (above and beyond the developer's profit) to fund works to the stadium – including any 'additional community benefits'. In those circumstances, the Council would - if it had agreed to this way forward - have already transferred its interest in the land, but would receive no value in cash or kind for it. In those circumstances, the athletics facilities would have been re-located and other property built, but no further community outcomes would be achieved.
- 3.2.5 NTFC would as an entity have to accept an additional level of financial risk from participating in this development scheme. In the event of failure of the scheme (i.e. it making a loss), this would pose an additional risk of financial failure of the Football Club. In those circumstances the freehold of the Stadium (less the athletics facilities) would remain with the Council, but the Council could be drawn into additional liabilities in relation to the property.
- 3.2.6 NTFC believe that the expansion of the stadium's capacity, as part of generating benefits for the community, would also allow the Club to accommodate more travelling fans from larger clubs and give it the ability to host international games for young players. This, in turn, would allow extra income generation, to make the Club's revenue position more secure.

- 3.2.7 The proposed development scheme would help to support growth within the Town and to bring forward brownfield land for development. The viability of the scheme would obviously have to take account of any section 106 or other planning obligations.
- 3.2.8 The basis proposed by NTFC/ Development Partner relies upon HCA also being willing to transfer their property interests upon the same basis as this Council is being asked to (i.e. at less than full market value). HCA appear receptive to the general principle of financially supporting changes to the Stadium, subject importantly to there being sufficient additional community benefits generated as a result.
- 3.2.9 Rugby and Northampton Athletics Association have previously agreed a variation with NTFC of their existing Licence Agreement. They have accepted a lower level of facilities than provided for within the original agreement, in order to compromise a financial/ legal dispute with NTFC. That compromise arrangement was further based upon the assumption that the athletics facilities would be re-located to a new improved facility elsewhere in Northampton, at no cost to the Athletics Association, by March 2011. That deed is not binding upon this Council.

### **3.3 Choices (Options)**

- 3.3.1 The Council could choose to support the basis put forward by NTFC/Development Partner, accepting the risk that it may not generate any value for this Council and further that if the development scheme is not commercially successful no funds may be generated to allow NTFC to finance any stadium improvements either.
- 3.3.2 The Council could choose not to accept the risks inherent in supporting the scheme on the basis put forward by NTFC. NTFC have stated that if this basis is not supported, the scheme will not proceed. If that proved to be the case, development in the locality would either not occur, or be more piecemeal in nature. The Council would retain its freehold interest in the whole of the Stadium complex and the ability to agree some alternative basis for development in the future. The Football Club would not be in a position to expand its range of facilities within the near future. The Athletics Association would not be relocated and would have to review the basis of its occupation (consistent with terms of the deed referred to above).
- 3.3.3 The Council could, as recommended above, choose to offer to support re-development of part of the Stadium complex, but only upon the basis that the Council receives full commercial value for the transfer of its interest in land. The Council could then choose to use any proceeds generated to support capital investment in projects recognised as supporting corporate priorities in the Town (without there necessarily being any re-investment in the Stadium). This might in turn lead to HCA adopting the same approach. NTFC have stated that if this position is adopted it would lead to the scheme not being pursued.

- 3.3.4 The Council could choose to offer to support a redevelopment scheme on the basis that it requires a proper commercial value in return for the transfer of its freehold interest. However, the Council could also choose to agree at the outset to subsequently re-invest some or all of those proceeds (post receipt of an actual 'proceeds of development' payment) in specific improvements to the Stadium complex. NTFC have indicated that this basis would be detrimental to the viability of the scheme in cash flow terms.
- 3.3.5 The Council could choose to offer support for re-development on a basis under which the Council agrees to forego a significant part of the commercial value payment it might otherwise receive for its interest in the relevant land. In return, NTFC would complete certain defined improvements to the stadium - that this Council was, at the outset, sufficiently satisfied would generate additional community benefits of sufficient magnitude (so as to justify any agreed reduction in the Council's share of development proceeds).

## **4. Implications (including financial implications)**

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### **4.1 Policy**

- 4.1.1 Any development facilitated would have to be consistent with the planning policy of this Council relating to this area – especially concerning any commercial facilities included and the proportion of affordable housing created.
- 4.1.2 If the NTFC/ Development partner proposed basis was accepted, or some variation of that was to be agreed, that would represent a disposal of a property interest at less than full market value. Cabinet would have to be satisfied that any additional community benefits that would be generated, in lieu of receipt of full commercial value, represented proper and adequate value for the people of the Town.

### **4.2 Resources and Risk**

- 4.2.1 Revenue: There are limited revenue liabilities that immediately arise, save for officer time, from agreeing to support this proposal. However, it may be necessary to employ an appropriate external consultant surveyor to advise the Council upon any pre-agreed financial model used for the development scheme in any agreement reached with the other parties. In the event of the scheme being unsuccessful and there being resultant negative impact on the finances of NTFC, there is the risk of exposure of this Council to additional costs connected to the maintenance of the physical asset.
- 4.2.2 Capital: The recommended basis could, in the event of a successful development, lead to this Council obtaining a capital receipt. It is difficult to quantify what this sum might be at this stage. However, it should rationally represent approximately 50% of the additional value of the land transferred for development compared with its value in current use (after taking into account legitimate associated development costs).

### **4.3 Legal**

4.3.1 The legal position is generally set out in this report. There is the clear risk to this Council that it could, under the proposed deal structure put forward by NTFC/ Development partner be obliged to transfer its interest in land without subsequent obligations by NTFC being performed (due to lack of finance).

4.3.2 A General Consent to dispose of land at less than best price was issued by the Secretary of State under s. 123 of the Local Government Act 1972 in circular 06/03. This consent enables local authorities to dispose of land at an under-value where they consider this will contribute to the promotion or improvement of the economic, social or environmental wellbeing of their area. The discount from full value must not exceed £2m per transaction. Disposals at an under-value of over £2m require specific consent from the Secretary of State.

### **4.3 Equality**

An equality impact assessment would be required to consider all the potential outcomes that might arise from this proposal, if it is supported.

### **4.4 Consultees (Internal and External)**

Northampton Town Football Club; Homes & Communities Agency; Proposed Development Partner of NTFC

### **4.5 How the Proposals deliver Priority Outcomes**

Support Growth in the Town

### **4.6 Other Implications**

None specifically

## **5. Background Papers**

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5.1 Files: Asset Management;

**Simon Dougall – Asset Manager**