

Annex 12: Principles and analysis of enabling development and relevant case law

Principles and analysis of enabling development

1. Under all the sites and options considered, enabling development will need to be the principal tool in order to fund the project. To provide a commercially sustainable community stadium it is estimated, in the assessment below, that a significant funding gap exists. The feasibility and development appraisal work has established that this is possible.
2. The success of this project relies on the on finding a site which has scope to provide an enabling development to close the funding gap. Even the base option will rely on enabling development. It has been successfully used across the country as a means of funding stadium developments. In some cases the full capital value of the project has been funded as an enabling development. St Helens, Southend, Warrington, Chesterfield, Wakefield and Grimsby are just some examples where development that would not normally have been granted planning permission has been approved as a means of delivering a much needed wider public benefit i.e. a stadium. Independent commercial and planning advice, based on case law and practice elsewhere in the UK, has identified that there is scope to close the funding gap through an enabling development for this project and deliverer a facility mix offering a commercially sustainable facility with wider community use. Considering the sites under consideration there is scope to use enabling development as the principal tool in closing the funding gap for the delivery of this project.
3. In practice, it is impossible to use precise analysis of the financial contributions. Commercial reality dictates that that land owner and developer must see value in any project to make it deliverable. Thus the mix of proposed uses and assessment of land values must be balanced and judged against how proportionate any uplift is. Evidence suggests that such issues have been successfully resolved, by the significant number of other commercial driven stadia projects.
4. The Vanguard site (30 acre site at Monks Cross) offers the greatest opportunity to provide enabling development for this project. It became available at the beginning of 2010, when HSBC's development option lapsed. It has an extant business use and the owner is keen to pursue a scheme for the site. Huntington Stadium is directly adjacent to it.
5. There are though significant legal issues associated with the use of enabling development. In principle the enabling development would secure the funding to establish the community stadium by means of a planning obligation. In order for such an obligation to be lawfully entered it would have to be shown that the obligation meets the tests set out in italics below:
 - “necessary to make the proposed development acceptable in planning terms” - in order to bring a development in line with the objectives of

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sustainable development as articulated through the relevant local, regional or national planning policies.

- “directly related to the proposed development” – there should be a functional or geographical link between the development and the item being provided as part of the developer’s contribution.
 - “fairly and reasonably related in scale and kind to the proposed development” – excessive levels of inappropriate development going beyond what is necessary to enable the stadium element weigh the balance against the grant of planning consent. Obligations should not be used solely to resolve existing deficiencies in infrastructure provision or to secure contributions to the achievement of wider planning objectives that are not necessary to allow consent to be given for a particular development.
6. There is no case law as yet directly on these provisions. However, a recent Compulsory Purchase case suggests that the Courts will require there to be a real connection between the off-site benefits and the development other than the simple fact that one would subsidise the other.
7. Further, it appears from the cases where sports stadia have been the subject of enabling development that, in order for weight to be attached to enabling development, it is necessary to clearly demonstrate that:
- there is an overriding or urgent need for the facility or that it will have regeneration benefits;
 - that there are negative consequences of not providing the new facilities which outweigh the harmful consequences of the inappropriate development and tip the balance in favour of the development;
 - that the need can only be met through the enabling development
 - that there is certainty that the scheme is deliverable
 - the scale of enabling development proposed should not exceed what is necessary to fund the development of the community stadium.
8. Once there are identified sites and outline proposals for the enabling development further advice will be required as to the extent that those proposal meet the legal tests for use of a planning obligation.
9. In assessing the material planning considerations, a key issue will be whether the overall need for the community stadium outweighs the objections to the enabling development. In making a case for an enabling development a clear need for the project has been established. This will be more convincing the greater the community benefit and social / economic impact of the project and if it can be demonstrated that there will be negative impacts if the project is not delivered. Thus, the greater the outputs the greater the chance of increasing the financial contribution. The amount that can be achieved is dependent on the site,

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the existing / zoned use for the site, the quantum / extent of development, assessment of planning harm against the socio-economic benefits the stadium offers.