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**Executive****27 September 2018**

Report of the Corporate Director of Economy and Place  
Portfolio of the Executive Leader (inc. Finance & Performance) and  
Executive Member for Transport and Planning

**Appropriation of land on Bootham Stray for Highways purposes****Summary**

1. This report seeks consent to appropriate land on the small part of Bootham Stray for highway purposes to expand the current access to land at Cocoa West development site and therefore to facilitate the proposed residential development. The current access will be improved and widened to allow for a new right hand turn on Wigginton Road into the site, for safety and traffic flow reasons and will become adopted highway as the development progresses. In the interim a short term licence is proposed to be granted to Newby Developments on the terms and conditions as set out within this report.

**Recommendations**

2. The Executive is asked to:
  - Authorise the appropriation for highway purposes of land on those parts of Bootham Stray shown coloured red and stippled blue on the plan attached at Annex 1 (“the Access Land”)
  - Approve the grant of a short term licence to Newby Developments to carry out works to, those parts of Bootham Stray shown coloured red and stippled blue on the plan attached at Annex 1

Reason: to enable access to the adjacent Nestle development site, to facilitate the proposed residential development and ensure a safe and sustainable road layout to enable the timely development of new housing.

## Background

3. A planning application is currently being considered by the planning authority for the development of the Cocoa West site for residential development comprising 425 houses and apartments, which shall  
Include 20% social housing.
4. The development of the site requires an expanded access point onto Wigginton Road in order to create a suitable safe junction. The junction goes over land which forms part of Bootham Stray shown coloured red (“the Red Land”) and stippled blue (“the Blue Land”) on the Plan attached at Annex 1. The Blue Land is already the route of an existing private access road into the Nestle factory and Cocoa West site pursuant to a permanent right of way easement granted by the Council when it sold the land now comprising the Cocoa West site and other land to Nestlé’s predecessor Joseph Rowntree in 1896.
5. The dimensions and location of the existing road on the Blue Land are insufficient to enable the proposed residential development of the Cocoa West site on traffic safety grounds. Therefore the small amount of land marked red in Annex 1 is required for the access to enable a fully formed and appropriate traffic junction. (See plan at Annex B) As illustrated on the plan in Annex 2, the highway improvements will allow a new right hand turn lane to be accommodated on Wigginton Road for safety and traffic flow reasons, which incorporates pedestrian crossing points and sufficient visibility splays.
6. The combined area of the Blue Land and the Red Land is 379 square metres (the Blue Land comprises 327 square metres whilst the Red Land comprises 52 square metres). The two plans in Annex 3 illustrate the extent of the whole area of the Stray. The current access is coloured blue.
7. Whilst the Council is the owner of Bootham Stray, that land is an open space recreation area for the residents of York. Vehicular access has been permitted across the thin strip of Bootham Stray that runs along the side of the former Nestle factory and that land has not been used for recreation since 1896, however any additional land needed for the road access is still subject to the legal protections afforded to the whole stray.

8. Annex 3 shows the adjacent car park, also leased and historically used by Nestle is shown coloured green. The area of the car park is 1,385 square metres. (See also photographs in Annex 4 of the current access and car park). As part of the development proposals for the residential scheme, which will be considered by planning officers in due course, it is proposed that the current car park area will be set out as publicly accessible stray land. This land is over 3 and a half times the size of the land proposed for the junction and will more than adequately replace the potential amenity value of the red and blue land. (See plan at Annex 5).
9. If the existing access is not expanded then the proposed development on the Cocoa West site will be substantially restricted. This will mean that much needed housing in York will not be able to be delivered. The city has an acute need for a range of new housing including affordable housing and the reuse of brownfield land for housing delivery is key to the achievement of new homes set out in the local plan. Discussions have therefore taken place with the developer to support the enabling activities of the developers of the Cocoa West site and explore options for delivering the access route.

### **Options**

10. Consideration was given to disposing of the land to the developer to enable the scheme to go forward. However this is not recommended as the process of disposal of any Stray land would be very difficult expensive and time consuming. It would also take the land out of council ownership in perpetuity.
11. Offering the Developer a long lease to permit the road to be constructed would restrict the parties who would benefit from it to the initial tenant(s) named in the lease and their assignees/successors in title so would not be a feasible option for the proposed large scale residential development on the adjoining site which would need to be accessible to all.
12. The preferred option is therefore to appropriate the land for highway purposes and for the developer to construct the junction ready for adoption of the road, This would mean that, if in the future this access was no longer required, it could be returned to Stray use.

13. If the Council wishes to appropriate part of Bootham Stray as highway then:
  - (i) Notice of this needs to be advertised in a local newspaper in two consecutive weeks and the Council must consider any objections or other comments received
  - (ii) Any appropriation of Council land to a different use/purpose must be approved by Executive
14. Discussions have taken place with the developer and it is proposed that an improved road will be built by the developer across the Blue Land and the Red Land shown on the plan in Annex 1, to replace the existing private vehicular access. When constructed to the satisfaction of the highways department, this improved road would then become an adopted highway at which point the existing right of way easement over the Blue Land would be released.
15. In order for this to happen the following staged process is required;
  - Appropriation of the Blue Land and the Red Land on the plan in Annex 1 for highway purposes. This will enable the existing entrance to the site to be widened and the adoptable highway to be constructed.
  - Granting of a short term access licence to the developer of the Cocoa West site authorising them to carry out works on the Blue Land and the Red Land. The licence fee for such will be £10,000 per annum and this money will be used towards maintenance of the Strays and other public recreation facilities owned by the Council.
  - Once the road has been upgraded to adoptable standards to the Council's satisfaction, the improved access road will be adopted by the Council as highway maintainable at public expense and the existing right of way easement over the Blue Land would be released.
16. The short term licence, granted following completion of the appropriation, will enable the developer to occupy the Red Land in order to carry out the necessary road construction works. The licence fee of £10,000 pa is set at a high level to ensure the road is constructed to an adoptable standard as quickly as possible. In addition the licence will be personal to the developer only and so adoption of the road will need to be completed before any of the

development on the adjoining site is occupied. Nestle have a further access across the Stray for their operations at a licence fee which is below this figure.

## Consultation

17. As part of the process a S.122 Notice Local Government Act 1972 will be issued for the additional land required which will be published in the local press in two consecutive weeks stating that the parts of Bootham Stray comprising the Blue Land and the Red Land on the plan in Annex 1 will be appropriated from open space to highway use, providing York Residents an opportunity to make their comments. These will be reported to the Executive Member for Transport.

## Council Plan

18. These proposals will enable housing to be delivered which is one of the Council's key priorities set out in the Council Plan 2015-9
  - A prosperous city for all – where local businesses can thrive and residents have good quality jobs, housing and opportunities

## Implications

19. **Financial** – Covered in the report
  - **Human Resources (HR)** - none
  - **One Planet Council / Equalities**
  - **Legal** -Whilst the Council is the owner of Bootham Stray, that land is an open space recreation area for the residents of York. If the Council wishes to appropriate part of Bootham Stray to another use/purpose (such as highway) then:
    - (iii) Notice of this needs to be advertised in a local newspaper in two consecutive weeks and the Council must consider any objections or other comments received
    - (ii) Any appropriation of Council land to a different use/purpose must be approved by Executive
  - **Crime and Disorder** - none
  - **Information Technology (IT)** - none
  - **Property** - Covered in the report

## Risk Management

20. Planning consent is required for the development and the access. In the event that such consent is not obtained then this proposal will not be implemented. The net risk is therefore low. Failure to enable the access road will mean that the site has limited housing delivery potential and fewer homes are created on the site.

## Contact Details

### Author:

Nick Collins  
Head of Commercial and  
Operational Asset  
Management  
Property Services  
(01904) 552167

Philip Callow  
Commercial Project Manager  
Community and Operational  
Asset Strategy  
(01904) 553360

### Specialist Implications Officer(s) List information for all

Financial Implications  
Name Debbie Mitchell  
Title Finance Manager  
Tel No (01904) 554161

Legal Implications  
Name Gerard Allen  
Title Senior Solicitor (Property Law Team)  
Tel No (01904) 552004

### Chief Officer Responsible for the report:

**Neil Ferris**  
**Director – Economy and Place**

Report  Date 16 Sep 18  
Approved

**Wards Affected:** Guildhall, Rawcliffe and Clifton Without

**For further information please contact the author of the report**

## Annexes

- Annex 1 - Map of the site
- Annex 2 – Highway Improvements Plan
- Annex 3 – Maps of Stray
- Annex 4 - Photographs
- Annex 5 – Plan of Development Proposals