



**Notice of a public meeting of
Corporate and Scrutiny Management Policy and Scrutiny
Committee (Calling In)**

To: Councillors Williams (Chair), Galvin (Vice-Chair), Crisp, D'Agorne, Fenton, Gates, Levene and Reid and (1 x Conservative Vacancy)

Date: Monday, 6 March 2017

Time: 5.30 pm

Venue: The King Richard III Room (GO49) - West Offices

AGENDA

1. Declarations of Interest

At this point, Members are asked to declare:

- any personal interests not included on the Register of Interests
- any prejudicial interests or
- any disclosable pecuniary interests

which they may have in respect of business on this agenda.

2. Public Participation

It is at this point in the meeting that members of the public who have registered to speak can do so. The deadline for registering is **5.00pm on Friday 3 March 2017**. Members of the public can speak on agenda items or matters within the remit of the committee. To register to speak please contact the Democracy Officer for the meeting, on the details at the foot of the agenda.

Filming, Recording or Webcasting Meetings

Please note this meeting may be filmed and webcast or audio recorded and that includes any registered public speakers, who have given their permission. The broadcast can be viewed at <http://www.york.gov.uk/webcasts> or, if recorded, this will be uploaded onto the Council's website following the meeting.

Residents are welcome to photograph, film or record Councillors and Officers at all meetings open to the press and public. This includes the use of social media reporting, i.e. tweeting. Anyone wishing to film, record or take photos at any public meeting should contact the Democracy Officer (contact details are at the foot of this agenda) in advance of the meeting.

The Council's protocol on Webcasting, Filming & Recording of Meetings ensures that these practices are carried out in a manner both respectful to the conduct of the meeting and all those present. It can be viewed at http://www.york.gov.uk/download/downloads/id/11406/protocol_for_webcasting_filming_and_recording_of_council_meetings_20160809.pdf

3. Called-in Item: Disposal of Land to English Heritage for a Clifford's Tower Visitor Centre (Pages 1 - 42)

To consider the decisions made by the Executive at a meeting held on 26 January 2017 in relation to the above item, which has been called in by Councillors Flinders, Craghill, Hayes and Warters in accordance with the Council's Constitution. A cover report is attached setting out the reasons for the call-in and the remit and powers of the Corporate and Scrutiny Management Policy and Scrutiny Committee (Calling-In) in relation to the call-in, together with the original report and the decisions of the Executive.

4. Urgent Business

Any other business which the Chair considers urgent under the Local Government Act 1972.

Democracy Officer:

Name: Laura Clark

Contact Details:

- Telephone: (01904) 554538
- E-mail: Laura.Clark@york.gov.uk

For more information about any of the following please contact the Democracy Officer responsible for servicing this meeting:

- Registering to speak
- Business of the meeting
- Any special arrangements
- Copies of reports and
- For receiving reports in other formats

Contact details are set out above.

This information can be provided in your own language.

我們也用您們的語言提供這個信息 (Cantonese)

এই তথ্য আপনার নিজের ভাষায় দেয়া যেতে পারে। (Bengali)

Ta informacja może być dostarczona w twoim własnym języku. (Polish)

Bu bilgiyi kendi dilinizde almanız mümkündür. (Turkish)

یہ معلومات آپ کی اپنی زبان (بولی) میں بھی مہیا کی جاسکتی ہیں۔ (Urdu)

 (01904) 551550

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Corporate and Scrutiny Management Policy and Scrutiny Committee (Calling-In)**6 March 2017**

Report of the Assistant Director – Legal and Governance

Called-in Item: Disposal of Land to English Heritage for a Clifford's Tower Visitor Centre**Summary**

1. This report sets out the reasons for the post decision call-in of the decisions made by the Executive on 26 January 2017 in respect of the Disposal of Land to English Heritage for a Clifford's Tower Visitor Centre. The Executive agreed to grant a long lease of the land needed for the construction of the English Heritage Clifford's Tower visitor centre to the Historic Buildings and Monuments Commission for England following the final agreement of planning permission, for a sum of £25,000. This cover report sets out the powers and role of the Corporate & Scrutiny Management Policy & Scrutiny Committee in relation to dealing with the call-in.

Background

2. An extract from the Decision Sheet issued after the Executive meeting is attached as Annex A to this report. This sets out the decision taken by the Executive on the called-in item. The original report to the Executive on 26 January 2017 on the called-in item is attached as Annex B to this report.
3. The Executive's decision has been called in post decision by Councillors Flinders, Craghill, Hayes and Warters for review by the Corporate & Scrutiny Management Policy & Scrutiny Committee (Calling-In), in accordance with the constitutional requirements for call-in. The following are the reasons given for the call-in:
 - This land will be used as the site for the proposed English Heritage Clifford's Tower visitor centre to be built into the motte. We believe the decision to sell the land needs further scrutiny.

- There has been a very high level of public opposition to the Clifford's Tower visitor centre. In particular there have been major concerns about the site itself, as evidenced by the 3780 signatories to a petition protesting this proposal and the choice of site in the motte.
- This petition was presented at the last Full Council Meeting in December and York MP Rachel Maskell presented a copy of the same petition at the English Heritage head office in London.
- There have been public demonstrations with over 100 people attending, along with extensive media coverage.
- There has also been considerable opposition from heritage organisations, evidenced by all of the six main amenity groups objecting during the planning process.
- Additionally, the planning process itself is subject to a Judicial Review in the High Court. This decision is regarded by City of York Council and English Heritage to be of regional or national significance and will be heard by a senior Judge.
- The English Heritage consultation prior to planning was essentially only a one day event held in a hotel with approximately 150 people attending both. There were some features in the local press and radio about these events with photographs of the plans. The consultation in our view was not widespread considering the importance of Clifford's Tower to York. Following the consultation there were a large number (80) of comment letters / feedback forms. This feedback has only recently come to light, since the planning decision was made. Of the 80 forms the majority had very strong objections to the siting of the visitor centre within the motte. The response to this feedback had very little impact on the design of the building and did not alter the siting in the motte.
- The fact that only a small number of planning objections were made in no way reflects levels of public concern. It is as a result of the widespread concerns about the site itself (that belongs to City of York Council) that we would like the decision calling in for scrutiny.

- The Castle Gateway Report offers a long awaited, comprehensive redevelopment proposal for the whole area surrounding Clifford's Tower and any piecemeal land disposal/land redevelopment has the potential to compromise the connectivity of these proposals. The scope for incorporating a Clifford's Tower visitor centre as part of the wider Castle Gateway proposal certainly exists and renders the Executive's land sale decision premature and requiring further scrutiny.
- The Local Government Act 1972 Section 123 states that Open Land cannot be sold without the permission of residents. It was stated at the Executive meeting that this land is not Open Land. Yet the Union Terrace car park was subject to process of consultation in September 2011 following a large petition. Then residents decided that they did not want to sell this land and the sale did not go ahead. We believe that York residents should have a similar opportunity to consider this decision to sell this very important piece of land, including parts of Clifford's Tower motte itself. Agreeing to sell this land without this opportunity for residents to be consulted needs further scrutiny in our view.
- Finally the price that was agreed for the sale of this land is only £25,000. We would like this valuation to be scrutinised. The Local Government Act 1972 specifies that the best price should be obtained for the sale of publicly owned land. This sale price and additional rental terms that were agreed in principle should, we believe, receive further scrutiny.

Consultation

4. In accordance with the requirements of the Constitution, the calling-in Members have been invited to attend and/or speak at the Call-In meeting, as appropriate.

Options

5. The following options are available to CSMC (Calling-In) Members in relation to dealing with this post decision call-in, in accordance with the constitutional and legal requirements under the Local Government Act 2000:
 - a) To decide that there are no grounds to make specific recommendations to the Executive in respect of the report. If this option is chosen, the original decision taken on the item by the

Executive on 26 January 2017 will be confirmed and will take effect from the date of the CSMC (Calling-In) meeting; or

- b) To make specific recommendations to the Executive on the report, in light of the reasons given for the post decision call-in. If this option is chosen, the matter will be reconsidered by the Executive at a meeting of Executive (Calling-In) to be held on 16 March 2017.

Analysis

6. Members need to consider the reasons for call-in and the report to the Executive and form a view on whether there is a basis to make specific recommendations to the Executive in respect of the report.

Council Plan

7. There are no direct implications for this call-in in relation to the delivery of the Council Plan and its priorities for 2015-19.

Implications

8. There are no known Financial, HR, Legal, Property, Equalities, or Crime and Disorder implications in relation to the following in terms of dealing with the specific matter before Members; namely, to determine and handle the call-in.

Risk Management

9. There are no risk management implications associated with the call in of this matter.

Recommendations

10. Members are asked to consider all the reasons for calling-in this decision and decide whether they wish to confirm the decisions made by the Executive or refer the matter back for reconsideration and make specific recommendations on the report to the Executive.

Reason: To enable the called-in matter to be dealt with efficiently and in accordance with the requirements of the Council's Constitution.

Contact details:

Author:

Dawn Steel
Head of Civic &
Democratic Services
(01904) 551030

**Chief Officer Responsible for the
report:**

Andrew Docherty
Assistant Director – Legal &
Governance

**Report
Approved**



Date 23 February 2017

Specialist Implications Officer(s) None

Wards Affected: All

For further information please contact the author of the report

Annexes

Annex A – Extract from the Decision Sheet produced following the Executive meeting on the called-in item.

Annex B – Report to the Executive of the Corporate Director of Economy and Place on Disposal of Land to English Heritage for a Clifford's Tower Visitor Centre (26 January 2017).

Background Papers

None

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EXECUTIVE**THURSDAY, 26 JANUARY 2017*****Extract from Decision Sheet***

Set out below is a summary of the decisions taken at the Executive meeting held on Thursday, 26 January 2017. The wording used does not necessarily reflect the actual wording that will appear in the minutes.

Members are reminded that, should they wish to call in a decision, notice must be given to Democracy Support Group no later than 4.00pm on Monday 30 January 2017.

If you have any queries about any matters referred to in this decision sheet please contact Carol Tague.

7. Disposal of Land for the Proposed Clifford's Tower Visitor Centre

Resolved: That the Executive agree to:-

- (i) Grant a long lease of the land needed for the construction of the English Heritage Clifford's Tower visitor centre to Historic Buildings and Monuments Commission for England following the final agreement of planning permission, for a sum of £25,000.
- (ii) Lease for a period of 2 years to English Heritage the land to be used as a public plaza at a rate of £5,475 per annum.
- (iii) Transfer to Historic Buildings and Monuments Commission for England the freehold of the area of the motte which is currently in their guardianship.
- (iv) Allow English Heritage to occupy the area of land edged with the blue line in Annex 1 on a

temporary licence at a rate of £1k plus VAT per month for the duration of the works to Clifford's Tower as identified above (subject to a maximum period of 15 months).

- Reason:
- (i) To enable the development of a new visitor centre at Clifford's Tower, and ensure the land value reflects best consideration.
 - (ii) To allow the building of a small plaza associated with the visitor centre whilst ensuring the council can include the land in any future plans for the area.
 - (iii) To rationalise the land holding of the Clifford's Tower motte and transfer an area of land to Historic Buildings and Monuments Commission for England for which they have responsibility as the current guardian.
 - (iv) To allow English Heritage to carry out the proposed restoration and improvement works to Clifford's Tower.



Executive

26 January 2017

Report of the Director of Economy and Place

Portfolio of the Executive Member for Finance and Performance and
Executive Member for Economic Development & Community
Engagement

Disposal of land for the proposed Clifford's Tower visitor centre**Summary**

1. English Heritage (EH) operates national heritage assets on behalf of the Historic Buildings and Monuments Commission for England (HBMCE), and intends to build a new visitor centre as part of works to improve and restore Clifford's Tower. They received planning permission for their proposals in October 2016. The site of the proposed visitor centre is partly on council-owned land, and to enable the project to proceed they need to acquire this parcel of land from the council. Officers have negotiated with EH and a proposed land deal is set out in this report.
2. The land deal would result in the grant of a long term lease of a small part of the footprint of the visitor centre to HBMCE; a two year lease of an adjacent piece of land for a public plaza area to EH; and the transfer of part of the motte to HBMCE which is already under their guardianship. The long leasehold of the land for the visitor centre and the freehold of the motte would be transferred to HBMCE at a value of £25,000, as established by formal valuation and reflecting the land's commercial value to EH, but also the need for the commercial return from the new visitor centre to fund the proposed restoration works. The lease of the land for the public plaza will be at a rate of £5,475 per annum, reflecting the loss of existing car parking income to the council. To allow the restoration and construction to take place the whole site will be transferred to EH on a temporary licence for the duration of the works.

Recommendations

3. Executive are asked to agree to:

- a) Grant a long lease of the land needed for the construction of the EH Clifford's Tower visitor centre to HBMCE following the final agreement of planning permission, for a sum of £25,000.

Reason: To enable the development of a new visitor centre at Clifford's Tower, and ensure the land value reflects best consideration.

- b) Lease for a period of 2 years to EH the land to be used as a public plaza at a rate of £5,475 per annum.

Reason: To allow the building of a small plaza associated with the visitor centre whilst ensuring the council can include the land in any future plans for the area.

- c) Transfer to HBMCE the freehold of the area of the motte which is currently in their guardianship.

Reason: To rationalise the land holding of the Clifford's Tower motte and transfer an area of land to HBMCE for which they have responsibility as the current guardian.

- d) Allow EH to occupy the area of land edged with the blue line in Annex 1 on a temporary licence at a rate of £1k plus VAT per month for the duration of the works to Clifford's Tower as identified above (subject to a maximum period of 15 months).

Reason: To allow EH to carry out the proposed restoration and improvement works to Clifford's Tower.

Background

4. English Heritage (EH) is the trading name for English Heritage Trust (EHT). They operate heritage assets under a licence from the Historic Buildings and Monuments Commission for England (HBMCE), whose trading name is Historic England. The ownership of these buildings, including Clifford's Tower, therefore rests with HBMCE but they are managed and operated by EH. Consequently, this report will refer to EH

as the lead body for the proposals as they are the operator of Clifford's Tower and will be responsible for the restoration and development works. The proposed land transfers would be to HBMCE as the owner of the assets, with the lease of the plaza and temporary licence for the works to be to EH as they represent short term agreements associated with the operation of the new visitor centre and undertaking of the restoration.

5. The ownership of Clifford's Tower and the land immediately surrounding it is set out in Annex 1. It reflects the historic ownership with the Tower and area edged red owned by HBMCE and the council owning part of the embanked motte (outside the retaining wall facing the car park) and the land surrounding the motte. The area of the motte that is subject to council ownership is under the guardianship of HBMCE.
6. In October 2016, EH (as the operational arm of HBMCE) received planning permission to build a new visitor centre as part of works to improve and restore Clifford's Tower. The site of the proposed visitor centre is partly on council land and partly on HBMCE's land, and EH has made a formal request to acquire the land. The proposal is set out further in this report.
7. Clifford's Tower is one of the city's key heritage assets and an important visitor attraction. Tourism is an important part of York's strong economy, with the sector itself worth an estimated £606m to the local economy (based on Visit York analysis, 2015), supporting in the region of 20,000 jobs (ONS, 2016). The city's heritage and cultural offering is central to this economic opportunity, with many historic attractions acting as a draw for visitors. This is manifested in an above average proportion of cultural jobs in York in comparison with the national average (e.g. more than double in the case of museums and archives). The city's Economic Strategy 2016-2020 and 2030 city vision also outlines the opportunity for the creative use of its heritage and unique assets in cementing York's reputation as a distinct, exciting and beautiful northern city, and as a driver for its economy.
8. The proposal is also consistent with the aims of the 2015-19 Council Plan, namely a prosperous city for all, which commits to ensuring everyone who lives in the city can enjoy its unique heritage, and that visitors, businesses and residents are impressed with the quality of our city. The visitor centre will improve accessibility to and interpretation of the Tower and aims to increase visitor numbers and satisfaction with the improved facilities. The total restoration project represents a significant investment of £5.2m. It provides for:

- The repair of the castle's structure
 - The construction of a larger roof deck
 - Provision of access to view and enter currently inaccessible first floor areas
 - A new visitor centre at the foot of the castle motte
 - Extensive interpretation and virtual access for visitors unable to explore the tower
9. English Heritage anticipates that the project will increase the numbers of visitors to the site by some 24,000 p.a. The funds are scheduled for expenditure in 2017 as part of a national capital investment programme that will enable the charity to become independent of Government subsidy by 2022. The new visitor centre would sit at the base of the motte where the existing steps provide access to the tower (see Annex 2). A summary of EH proposals can be found in Annex 3. Annex 4 contains some historic pictures of Clifford's Tower in the 1930s before the current motte was constructed.
10. In addition to the actual visitor centre and restoration and improvement works to Clifford's Tower, EH propose to create a small plaza area for outdoor seating and improve the overall setting of the monument. Consequently EH have approached the council with an offer to acquire an interest in the pieces of council-owned land needed to deliver their project. There are three elements to the project:
- Gaining temporary access to the area of land needed to carry out conservation and construction works to the motte and Tower
 - The acquisition by HBMCE of the area of land required for the construction of the new visitor centre and to formalise ownership to HBMCE the section of the motte that is in council ownership but currently under HBMCE guardianship
 - The lease of an area of land at the base of the motte to form a plaza
11. Land for the visitor centre – The transfer of the land shaded blue in Annex 1 would allow EH to build the new visitor centre, improving accessibility and the visitor experience as part of major restoration works to the tower and the motte. The value of that land needs to reflect any alternative use value, the commercial value to EH of the visitor centre, and the importance of that commercial value in funding the overall restoration works. As the visitor centre is partly set in to the motte it is highly unlikely that the land would receive any alternative planning permission for an

alternative use so in that respect it has a limited land value. However, the newly created visitor centre has a commercial value to EH, as it provides a gift shop and cafe which would generate an income, albeit it should be noted that part of the proposed visitor centre is on land already owned by HBMCE. This income will provide a revenue stream which has been considered by EH in their business case in spending £5.2m on their proposals. Independent valuation advice has been sought (Annex 5) to consider the land value, with regard given to the income the centre may provide to EH, whilst considering the costs of carrying out the overall works. That advice has determined that a figure of £25,000 would represent best consideration for the disposal of the land on a long leasehold basis. The land will not be transferred to HBMCE unless and until they have completed the proposed construction works. However it is not proposed to impose a positive contractual obligation on EH to carry out any development works as otherwise the arrangement might be constructed as a 'works contract' for the purposes of the Public Contract Regulations (PCRs) which would therefore need to be procured in accordance with the PRCs. It is instead recommended that if EH do not carry out their proposed development works within a specified timescale then the Council would have the right to terminate the Agreement and decline to transfer or lease any our land to EH.

12. In addition to the long leasehold transfer, EH would also need the council's permission to install, maintain and service utilities over the council's adjoining land in order that the visitor centre could be linked up to mains services. The council would ensure we reserve the right to relocate or divert any such services at EH's cost so as to not fetter future redevelopment plans, albeit the proposed service runs are not considered to be in a location for which this is likely at this time.
13. Land for small plaza area - In addition to the land required for the visitor centre EH propose to create a small public plaza area as shaded orange in Annex 1. The purpose of this is to improve the setting of the visitor centre and create a buffer from the adjacent Castle car park. The plaza would be situated on land that the council owns and was previously licensed to the law courts for car parking (see paragraph 17). EH propose to take control of these 14 parking spaces during the construction period (the land shaded orange and purple in Annex 1). On completion they will reprovide 9 car parking bays on land that they will return to the council (shaded purple). The new plaza will then be leased to EH and result in the loss of 5 car parking spaces.

14. Unlike the land required for the visitor centre the land need for the plaza does have an existing commercial value to the council. During the construction period, when all existing 14 spaces are lost, EH have committed to reimburse that level of lost income directly to the council. On completion of the works EH will return 9 newly constructed car parking bays to the council allowing income to be generated. The rate at which the land is leased must therefore reflect the loss of income from 5 car parking spaces which has been calculated at £5,475 per annum. The lease will not be granted to EH unless and until they have completed the proposed construction works.
15. To protect the council's future interests the lease of the plaza land will be for a period of 2 years only. This is in recognition of future plans to consider a comprehensive redevelopment of the Castle Gateway area, including consideration of alternative uses for Castle car park. As the land is adjacent to this site the council may wish to include the plaza area within any wider proposals to redevelop the area and improve the public realm to ensure it can be successfully integrated into any new scheme. If plans have not progressed within that 2 year period the council will consider granting a further lease of the plaza area subject to acceptable terms being agreed.
16. Land ownership of the motte - In addition to the newly created visitor centre and plaza there are also significant works required to conserve and safeguard the motte on which Clifford's Tower sits. As illustrated in Annex 1 a large proportion of the motte is already in HBMCE's ownership and maintained by EH. However, one section (shaded pink in Annex 1) remains within the council's ownership but under the guardianship of HBMCE. This is a result of the historic arrangements relating to the motte and the surrounding land uses of Clifford's Tower. Embedded within the current motte structure is a significant retaining wall which until the 1930s was exposed and formed part of the outer walls of the Victorian women's prison. It was on demolition of the prison in 1935 that the motte was reformed and the spiral access path to the tower replaced with a straight staircase. The area of the newly reinstated motte that extends out from the now buried retaining wall in to Castle car park remained in the council's ownership but under the guardianship of HBMCE. It is proposed to formally transfer the ownership of this remaining section to HBMCE for nil payment given that the upkeep and repair is already their responsibility. In addition to simplifying the ownership arrangements it will reduce any future council liability for the stability for the motte or the tower. This land is not judged to have any commercial value.

17. Construction works - All of the construction and restoration works described above will require a site compound to be established to allow the works to progress in a secure environment. The land needed is edged with a blue line in Annex 1, and involves allowing EH to occupy the whole of the Clifford's Tower motte and the land currently licensed to the law courts under EH control for the duration of the works (subject to a maximum period of 15 months). Officers have already given the law courts 6 months written notice terminating their licence for use of the parking spaces on 9th December 2016 in accordance with the provisions of that licence agreement. This was to expedite the process in the event that EH did receive planning permission for their proposals. As noted above, during the construction period EH will pay the council a licence fee of £1,000 per month that accounts for the loss of income from the law courts use of the parking spaces.
18. This decision was taken having considered the risks associated with cancelling the lease in advance of any agreement to dispose of the land to EH or planning permission having been granted. The risk was deemed to be minimal, as should the scheme not progress then income will be replaced by allowing public car parking on the site.
19. The land deal as described above would facilitate the restoration, conservation and improvement works to Clifford's Tower. It would allow the building of a new visitor centre providing a much improved visitor experience attracting higher numbers of tourists to the city. The grant of the long lease of the site for the visitor centre recognises that the project is complimentary to the council's wider objectives for the area. Meanwhile the loss of revenue from car parking during construction would be covered by EH, and on completion the loss of 5 car parking spaces and associated revenue will be compensated for by the lease agreement with EH. The lease of the land for the plaza is for a short period of time meaning the proposals will not have an adverse impact on any future comprehensive redevelopment of the area.
20. The Planning Permission agreed in October 2016 is currently subject to an application to the courts to judicially review the planning decision. The disposal of land outlined in this report will be subject to the finalisation of a valid planning application which will require the conclusion of the judicial review process.

Consultation

21. The planning application was considered by planning officers in consultation with all statutory consultees, including conservation officers, and with regard to representations from members of the public. Having considered the application and officer recommendation the application was approved by planning committee.

Implications

22. The following implications have been identified:

- (a) **Financial** – The disposal will provide a £25k capital receipt for the council that can be used to support the council's overall capital programme. The lost income from the council's car parking spaces is being compensated from the arrangement with English Heritage so there are no adverse financial implications on the council's revenue account.
- (b) **Human Resources** – There are no human resource implications.
- (c) **Equalities** – The disposal of the land is not considered to have any equalities implications.
- (d) **Legal** – The General Disposal Consent Order (2003) gives the Secretary of State's consent (pursuant to S.123 of the Local Government Act 1972) to local authorities for disposal by them at less than best consideration/full open market value provided that:
 - (i) The Council (acting reasonably) is satisfied that the disposal will facilitate the promotion/improvement of the economic, social or environmental well-being of the area and;
 - (ii) The difference between the consideration/price received and best consideration/full market value does not exceed £2 million

If the above conditions are not satisfied then the Council would need to obtain the Secretary of State's specific consent under S.123 for any disposal (freehold sale or grant of lease for more than 7 years) at less than best consideration/full market value. On the basis of the valuation report which has been obtained, it is understood that the proposed disposal is in return for full market value/best consideration such that the consent of the Secretary of State is not required.

Any lease should be excluded from the security of tenure/renewal provisions of the Landlord and Tenant Act 1954 by following the relevant procedure before granting the lease, as otherwise the tenant may be entitled to the legal right to renew the lease on similar terms.

As mentioned above, no lease will be granted, or freehold ownership of the motte transferred, to HBMCE unless and until they have completed the proposed construction works. However it is recommended that the Council does not seek to impose a positive contractual obligation on EH to carry out any development works as otherwise the arrangement might be constructed as a 'works contract' for the purposes of the Public Contract Regulations (PCRs) which would therefore need to be procured in accordance with the PRCs. It is instead recommended that if EH do not carry out their proposed development works within a specified timescale then the Council would have the right to terminate the Agreement and decline to transfer or lease any our land to EH.

The decision of the local authority to dispose of its land is independent of any legal challenge to the decision of the local planning authority.

- (e) **Crime and Disorder** – The disposal of the land is not considered to have any crime and disorder implications.
- (f) **Information Technology** – There are no information technology implications.
- (g) **Property** – Covered in the report.
- (h) **Other** – There are no other implications.

Risk Management

- 23. EH have secured planning permission for their proposals. This is currently subject to an application for permission to seek a judicial review. Until this process has concluded the planning permission will not be finalised and the land disposal will not go ahead.
- 24. The negotiated land agreement protects the council's existing income that the land required for these proposals generates.

25. Should EH fail to proceed with the proposals, or if they are significantly delayed, then the loss of income from having terminated the law court lease on car parking would be replaced by opening up the spaces for public use.

Contact Details

Author:

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Commercial Project
Manager
Tel: 01904 551339

Chief Officer Responsible for the report:

Neil Ferris
Director of Economy and Place

**Report
Approved**



Date 13/01/17

Tracey Carter

Assistant Director
for Regeneration and Asset
Management
Tel: 01904 553419

Specialist Implications Officer(s) List information for all

Financial

Patrick Looker
Finance Manager
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Legal

Gerard Allen
Senior Solicitor
01904 552004

Wards Affected: *Guildhall*

All

For further information please contact the author of the report.

Background Papers:

Annexes

Annex 1 – Map highlighting the different elements of the proposed land deal for Clifford's Tower

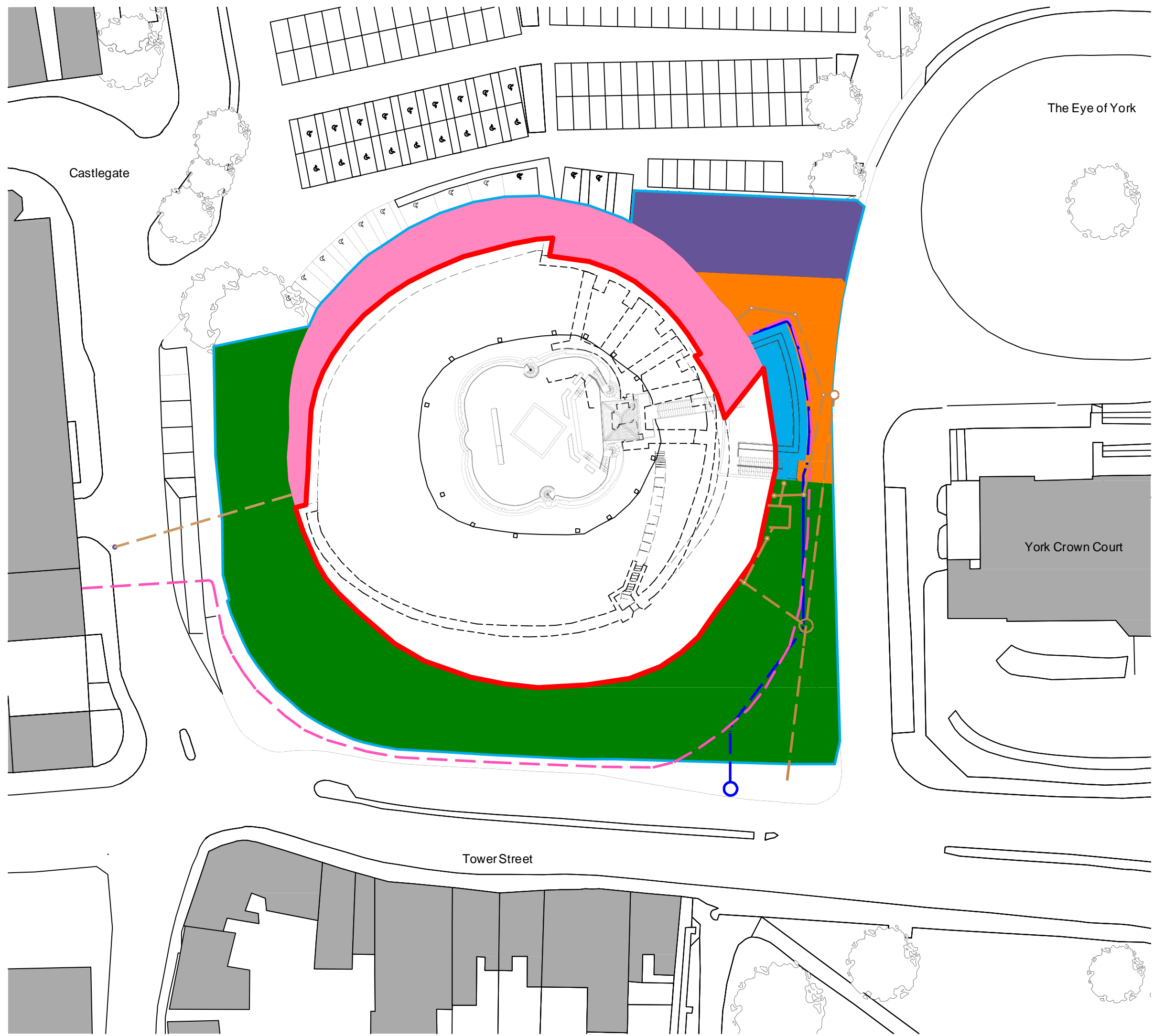
Annex 2 – Plan showing the proposed visitor centre

Annex 3 – English Heritage's statement on the Clifford's Tower Project

Annex 4 – Historic pictures of Clifford's Tower

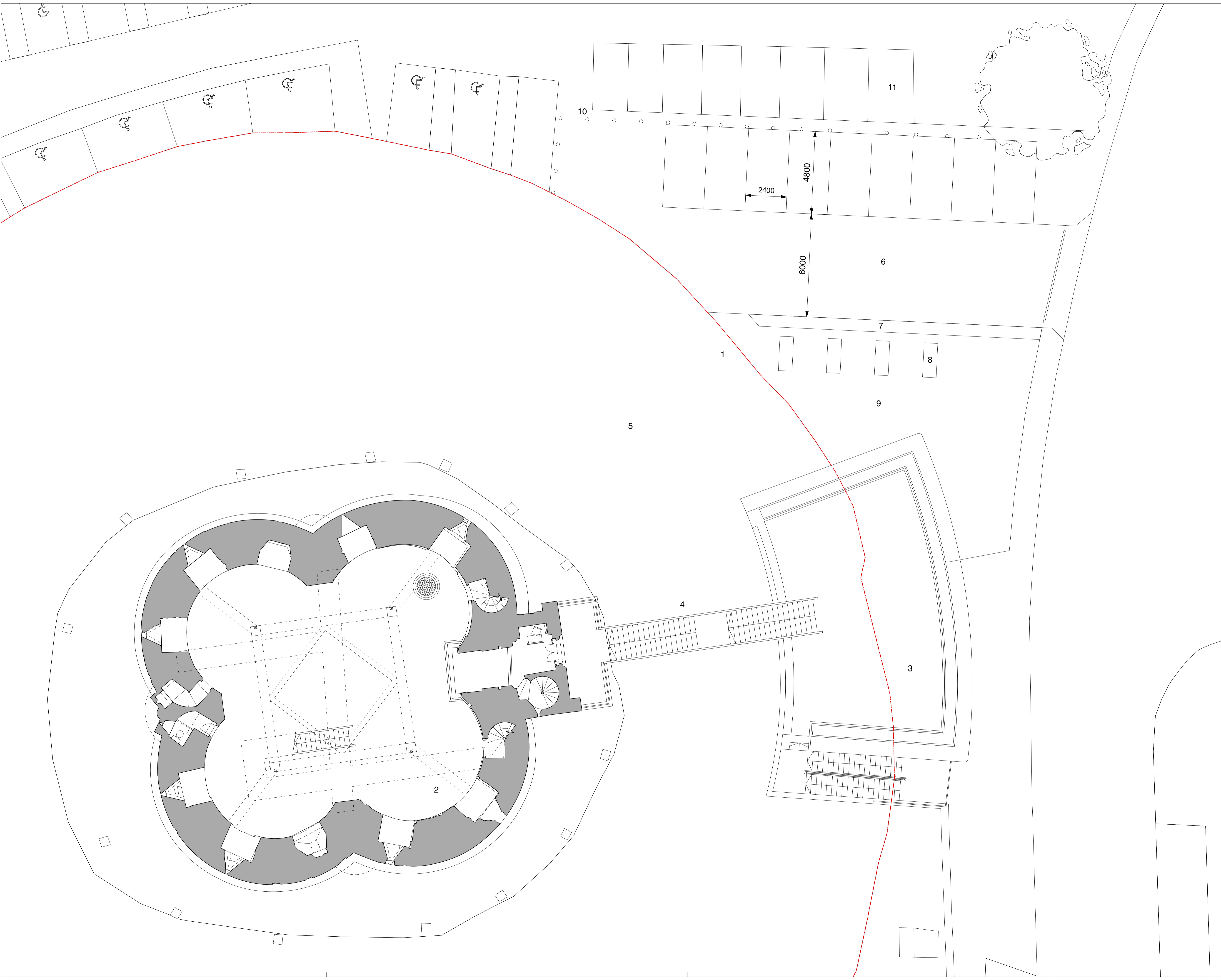
Annex 5 – External valuation

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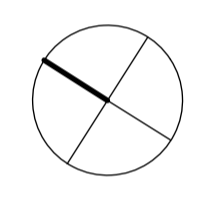
- Land owned by CYC held in guardianship - Proposed temporary licence for a construction area followed by land transfer to HBMCE
- Land owned by CYC - Proposed temporary licence for a construction area followed by a 2 year lease to English Heritage
- Land owned by CYC - Proposed temporary licence for construction area
- Land owned by CYC - Proposed temporary licence for a construction area followed by land transfer to HBMCE
- Land owned by CYC - Proposed temporary licence for a construction area
- Land owned by HBMCE
- Proposed construction area
- Proposed easement for electricity supply
- Proposed easement for water supply
- Proposed easement for drainage
- Proposed easement for telecommunications (TBC)

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Do not scale drawings
 All dimensions are in millimetres unless stated otherwise
 Use figured dimensions only and report any discrepancies in writing to the architect

- Specific key and notes**
- 1 Site boundary line
 - 2 Tower
 - 3 Visitor Centre roof terrace
 - 4 Stair from Visitor Centre to Tower
 - 5 Motte
 - 6 Land not part of proposal (for County Court car parking) - 9 car park spaces
 - 7 Hedge
 - 8 Seating
 - 9 New public realm area
 - 10 Existing bollards
 - 11 Existing council car park



English Heritage
Clifford's Tower, York
 Proposed Site Plan - New Car Parking Plan

Status: Sketch
 Scale: 1:100 / 1:200
 April 2016

Draw N° SK67 Revision A
 Drawn by SM | Authorised by HB | Size A1/A3

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English Heritage statement on The Clifford's Tower Project

Background

The new development at Clifford's Tower is explicitly conceived and designed by English Heritage to serve the public, both residents of York and visitors from the UK and abroad. Clifford's Tower is at present visited by around 150,000 people per annum, a substantial figure and one of the largest numbers for the 420 sites in English Heritage's portfolio of historic sites, but at the same time, surveys indicate that many visitors are dissatisfied with their visit and unlikely to return or recommend. It is anticipated that the project will generate an additional 25000 visitors in the first year, stabilising at 20,000 extra visitors annually thereafter. Research tells us that these extra visitors are likely to visit other attractions in York as well, further enhancing the benefits to the York economy.

English Heritage proposes to spend an estimated £5.2m on improving the experience at Clifford's Tower, with this substantial capital outlay designed to pay back in nine years, all revenues generated being put towards the Trust's charitable aims to conserve England's heritage.

The principal benefits to York of the Clifford's Tower project are as follows:

1 Conservation of an important Ancient Monument

English Heritage has designed a programme of conservation repairs to the historic fabric of Clifford's Tower, to the value of £790,000. These include substantial works to the upper ring-beam and the fabric of the wall-head, which has experienced localised deformation as a result of corrosion of the iron reinforcements, and the roof covering of the chapel, where badly designed drainage has allowed water to penetrate into the walls, and the timbers of the modern roof to decay.

In addition to these works, which rectify the adverse effect of interventions from the early 20th century, the addition of the new protective timber canopy will shield the internal masonry from the direct effect of wind and rain, without causing an abrupt and radical change of environment and its resultant migration of salts.

Together this programme of conservation work will protect Clifford's Tower for now and future generations of York residents.

2 Further opportunities for research and dissemination

There is significant potential for interesting and important new information to be uncovered during the course of the project, which would be shared with the people of York. With effective dissemination (as part of visitor interpretation during and after works, through various levels of publication, and on the world-wide web), this will increase the sum of public knowledge about Clifford's Tower and the wider site of York Castle. School visits will be encouraged to engage local children in their

heritage, with the new interpretation bringing history to life for a whole new generation.

As part of the feasibility and design phases of the project, a number of archaeological investigations have already taken place inside Clifford's Tower and on the earth mound. Before 2014, the site had undergone extremely limited investigation and almost no reliable information about the mound's physical composition exists in print. Since November 2014, archaeologists have excavated the foundations of the tower, examined the make-up beneath the present York-stone pavement of in the northern part of the interior, have taken soil cores from all levels of the mound down to natural soil, and have investigated the south-east quadrant of the 19th-century millstone grit wall concealed within the re-profiled base of the mound. The proposed project will afford an opportunity for further archaeological investigation, both inside the tower, especially in its southern lobes, and at the base of the mound, where the new visitor centre is designed to be built: these investigations have the potential to illuminate the development of the tower between the 13th century and the present, and the construction and successive enlargements of the mound and its buried ditches, potentially revealing Prehistoric, Roman and earlier medieval deposits.

Considerable amounts of staff time have already been invested in research, both to inform the design-development of the project, and the generation of content for future interpretation. All this research undertaken by English Heritage will help the people of York to understand more about the iconic Tower in their midst.

3 Improvement of access to Clifford's Tower

Improvement of access, in the broadest possible sense, is one of the fundamental drivers of the Clifford's Tower project. Proposed improvements to access may be considered within the following categories:

3.1) Physical access to the tower, around its interior, and to the roof

The proposed new development at Clifford's Tower will create a more staged route to the threshold of the tower than the uninterrupted flight of steps that currently runs up the mound. Inside Clifford's Tower, the two medieval spiral stairs will be supplemented by a new route to the upper parts of the structure, with horizontal walk-ways suspended below a new timber canopy/viewing platform at wall-walk level. The walk-ways provide access to the presently-inaccessible medieval garderobe chamber inside the north wall of the tower, the door into the south-west spiral stair (beside the chapel) and the two disused bartizan turrets that originally rose from the first floor of the tower to the parapet. All new stairs will be proportioned and detailed to be more easily negotiated by all ambulant visitors. In addition, care will be taken to make the new stairs and walk-ways easily visible to visitors with visual impairment. These access improvements are designed for the benefit to both

tourists and residents. According to the 2011 census, York has a slightly higher elderly population than the national average.

The new viewing platform at wall-walk level offers a considerably broader level space than the present narrow wall-walk, and will allow greater scope for visitors to enjoy the beautiful and commanding vistas at their leisure. It will also be possible for them to sit down on a bench in the northern part of the platform, or in 'amphitheatre' seating in the southern part of the roof structure.

3.2) Intellectual access, through improved and enhanced interpretation

The proposed visitor centre and the new protective canopy inside Clifford's Tower will create sheltered spaces (modern inside the visitor centre, both historic and modern inside the tower), and will include the following features:

- A display of the newly exposed 19th-century retaining wall, as the back wall of the new visitor centre, with explanation of when and why the motte was cut back, and eventually re-profiled to restore its 'medieval' form.
- A dedicated space inside the visitor centre, including both fixed graphics and computer animation, in which the development of the castle site and Clifford's Tower and key historical episodes will be set out.
- Virtual access will be provided inside the visitor building for those who cannot climb the stairs to the tower: this will include 360-degree views of the interior of the tower and the panorama from the roof-deck, and the visual and audio materials used for interpretation within the tower, with parallel text for those with auditory impairment.
- The roof of the visitor building allows discussion of the history of the Eye of York/former castle bailey.
- The interior of the tower will be interpreted by a variety of media, including the projection of images onto the stonework of the inner walls, illustrating the main episodes in the building's history, and discreet ambient soundtracks within each ground-floor embrasure, addressing eight historical episodes using contemporary texts. Graphics panels will also describe the tower's historic form and evolution, and specific architectural features such as the first-floor garderobe and the interior of the chapel.
- On the roof deck, it is proposed to inset into the perimeter hand-rail engraved panels with identifying labels and short descriptive text for major landmarks visible from Clifford's Tower, and the direction of places historically associated with the castle.

These spaces, together with the new decks on the roofs of both the visitor centre and Clifford's Tower, offer considerably greater scope for interpretation than the present layout.

4 To make Clifford's Tower a more effective participant in the cultural life of the city of York

Clifford's Tower is already a significant and highly visible cultural asset of the city, especially through the marketing of photographic images showing the tower atop its daffodil-covered mound: the tower is also used on a more occasional basis for city-wide events such as *son-et-lumière*-style projections, cultural tours and as a backdrop for ceremonies, such as annual observance of Holocaust Memorial Day.

The project will allow for the continuation of these initiatives, and will offer greater potential for events inside the tower itself, through the creation of covered space and through the enlargement of decking at roof level. The tower itself is rated with a maximum safe capacity of 120 people at least. This will create potential for theatrical presentations, the use of the tower for civic hospitality, for example. English Heritage is keen to work with other cultural organisations in the city to this effect.

5 Enhancement of the environment of the immediate area

Care has been taken in the architectural design of the project to minimise impact on the most sensitive aspects of the immediate environment, which includes the Eye of York, a nationally significant group of Grade I Listed Buildings, and the only formal architectural set piece within the city of York. The area also includes a large car-park, which is extremely well-used, but is widely criticised for its negative contribution to the visual amenity of the Castle area.

The new proposal requires significant but localised improvements to the pavements etc in the immediate vicinity of the visitor building, but consultation with City of York Council has indicated that there is an aspiration for much more wide-ranging and radical improvements, known as the 'Southern Gateway'. These may include the creation of a major new path axis running 'east-west', through the construction of a new pedestrian bridge across the River Foss from Piccadilly, and in the long term, it is hoped that the car park itself may be replaced with a more appropriate programme of public realm.

The proposal takes these potential initiatives into account, and is designed to complement them exactly. It is further hoped that the addition of the new visitor centre at the foot of the mound may serve as a catalyst for other initiatives to be brought forward for the necessary improvement of this area of the city.

6 Substantial addition to the heritage amenity of York and its region

York welcomes 6.8 million visitors a year who contribute £608m to the city's economy and support 20,300 jobs. (Source: Make It York) The Clifford's Tower

project would further strengthen the tourism offer in York and subsequent benefits to the economy.

Visitor experience expectations are growing, with investment by the Minster, Jorvik, York Art Gallery and the Theatre Royal raising the city's game considerably. Conversely visitor feedback from the Clifford's Tower visitor surveys reveal dissatisfaction due to the lack of interpretation or points of interest in the Tower. The project seeks to address these short-comings and make Clifford's Tower more welcoming to all, visitors and residents alike, further enhancing the York 'brand' to the benefit of the city.

English Heritage recognises that many residents have not visited Clifford's Tower for years. Therefore, in addition to the Residents' First weekend in January, we propose to introduce a further Residents' weekend each autumn. We anticipate the offer would be enjoyed by some 2,000 York residents over the each weekend.

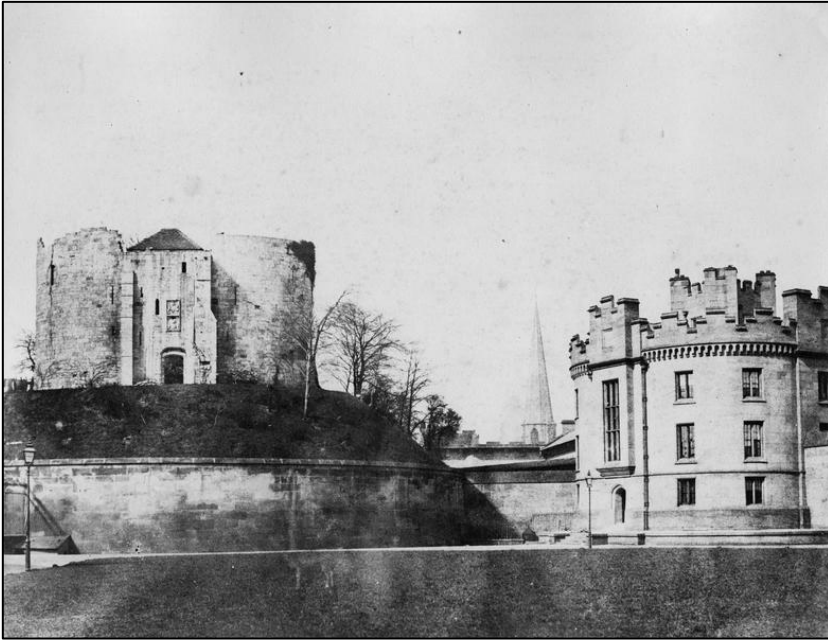
English Heritage Trust

English Heritage Trust is a charitable body, established in April 2015 to conserve, present and manage 420 ancient monuments and historic buildings across England. It retains the name of a previous publicly-funded body, whose grant-giving and regulatory responsibilities are now discharged by a new agency, Historic England. English Heritage was endowed with £80 million from the Government at the time of its creation, but its annual grant allocation will diminish annually and will cease entirely in 2023. English Heritage's conservation and presentation activities are funded from revenues from the operation of our sites and from donations.

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Pictures of Clifford's Tower

Historic pictures showing the nature of Clifford's Tower until as recently as the 1930s



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VALUATION ADVICE IN RESPECT OF PROPOSED VISITOR CENTRE, CLIFFORDS TOWER, YORK



DECEMBER 2016

BY SANDERSON WEATHERALL

Your ref:

Our ref: AWE/kb

5 January 2017

City of York Council
Property & Asset Management Team
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**For The Attention of N Collins Esq MRICS –
Commercial Property Manager**

Dear Sirs

PROPOSED DEVELOPMENT PROJECT AT CLIFFORDS TOWER, YORK

We refer to the meeting between Nick Collins and Andrew Ellis of Sanderson Weatherall on 1 December 2016 together with our formal proposal of 7 December 2016 and your confirmation of instructions of even date.

Current Situation

In Appendix III we include the site plan provided to us and which shows the current freehold interest of English Heritage shown edged red. City of York Council own all of the other coloured land on the plan (green, pink, blue, salmon and purple) together with other land in the area most notably the Castle Car Park to the north. The Castle Car Park adjoins the Coppergate Shopping Centre and River Foss, and which generally is regarded as a prime re-development opportunity subject to the constraints of such a sensitive location. Cliffords Tower comprises a scheduled ancient monument and Grade I structure. It is well known to you and hence we will not describe it in detail albeit it comprises a large stone tower situated on top of a large bund or Motte. The tower is operated as a visitor attraction by English Heritage, accessed via steps on the eastern side of the Motte to the side of the The Eye of York, York Crown Court and Castle Museum.

This staircase evacuates onto land owned by City of York Council and on which until recently comprised in part a separate car park for use by staff at York Crown Court. The land to the north forms part of the Castle Car Park operated as a pay and display car park by City of York Council.

Discussions have been ongoing between English Heritage, City of York Council and other stakeholders in order to provide an improved and updated visitor experience to Cliffords Tower and help fund repair works to the structure. Negotiations have been ongoing and terms have been agreed to allow English Heritage to secure the necessary property rights in order to construct a new Visitor Centre at the base of the steps of the Tower, part of which would be constructed on land already owned by English Heritage but the majority on land currently owned by City of York Council. Additional land is needed apparently to create a piazza in the approach to the new Visitor Centre. Temporary permission is also required to use additional land around the attraction during the period of construction.

In Appendix II we attach the draft heads of terms. Since these terms were prepared and following an earlier draft of this report the City Council has negotiated a price of £25,000 for transfer of the freehold interest in the land coloured blue and pink. Otherwise the main terms of the transaction are set out below. With reference to the plan in Appendix III the main elements to the transaction are as follows:-

1. Land coloured blue - 102 sq m – freehold transfer required for part of the Visitor Centre.
2. Land coloured pink - 572 sq m – freehold transfer partly to accommodate the visitor attraction and also for protection land around the Tower. Temporary license also required during construction.
3. Land coloured salmon - 216 sq m – required for construction of the piazza but to be held on only a 2 year lease excluded from the security of tenure provisions of the Landlord and Tenant Act.
4. Land coloured purple – 305 sq m – temporary construction license and thereafter returned to City of York Council for continued used as parking.
5. Land coloured green – 1818 sq m – required on a temporary basis during the construction works.
6. In addition various easements are required for services which will cross the green and salmon coloured land to be retained by the Council.

The more detailed terms are set out in Appendix II.

Until recently the Council has received an income of circa £12,000 per annum exclusive from the Court in respect of the existing car parking spaces. This income would be lost as would the potential to replace it with income from another tenant. Accordingly it is proposed to require a rental of some £1,000 per month (i.e., £12,000 per annum) during the period of the construction works effectively to leave the Council in no worse position.

On completion of the works the land coloured salmon and used as the piazza effectively removes 5 car parking spaces from this arrangement and accordingly English Heritage will pay a rent of £5,475 per annum exclusive plus VAT by way of rent. The Council will retain the ability to re-let the remaining 9 spaces coloured purple to third parties. This will return the Council to an equivalent position, it will not though necessarily take account of any additional value being created by English Heritage in respect of the pink and blue land nor which potentially City of York Council might be able to obtain from any third party. On this basis you have asked that we investigate the proposed package of measures and advise in light of the other elements of the transaction the price if any which ought to be levied in respect of the blue and pink land. Following initial advice the sale price for this land has been agreed at £25,000 and in our report we are asked to consider whether as part of a package of measures this can be recommended.



Guardianship

We are advised that currently the pink land is already under the guardianship of English Heritage. From the information provided to us it is our understanding that for land under guardianship although legal title remains with the Council, English Heritage already has control of the land together with responsibility for maintenance. This land is required to be transferred as part of the proposal as the rights of guardianship held by English Heritage do not extend so far as to permit development. Nonetheless it does seem to us that this guardianship further limits any value attributable to the pink land. This is not an area of law we have come across previously and hence recommend that your solicitors confirm our understanding of the situation and, in particular the restrictions, is correct.

Information Provided

As well as the information described above you have also provided to us a business case prepared by English Heritage which seeks to identify both the costs of the proposal and the likely additional revenue streams and amounts such to be able to establish the payback period. As identified in your e-mail exchange of 7 December 2016 and which is appended to the business case, it is understood that the anticipated cost of the proposed development is in the order of £5.2m and that a payback period of circa 14 years is anticipated based on additional profits of some £350,000 per annum on average. We are not cost or business consultants and it is not possible for us to assess whether the construction costs and other figures in the business case are correct. We assume this to be the case.

Description

The property and location are well known to us. In addition a series of photographs were taken on Saturday 10 December 2016 and which are attached in Appendix V. We can entirely understand the proposal from English Heritage to improve the visitor experience, which in our opinion currently is underwhelming for one of the main attractions in the City. The land generally presents poorly at the entrance to the facility and has a general hard covering with a mixture of fencing and bollards.

Development Potential

The history of the various development proposals for the Castle Car Park and what generally is known as Coppergate II is already very well known to you. The site has generated a lot of interest over the years with strong feelings on both sides as to whether or not the area should be redeveloped and, if so, how. There is no doubt that the location is extremely sensitive given not only the Cliffords Tower Monument but also The Eye of York and surrounding buildings. That said it would seem to us that the location is right for some form of sensitive redevelopment and as such this potential should be factored into the consideration of the land transactions now. Undertaken properly with appropriate legal documentation the temporary construction works over the wider area should not fetter any potential future redevelopment provided the land is returned back substantially to its existing condition.

Within the permanent legal transactions it is pleasing to see that the lease on the piazza area is to be excluded from security of tenure provisions of the Landlord and Tenant Act and as such gives the Council as landlord the unencumbered right to require return of this land. You may well wish to include a reinstatement provision albeit probably better still is for the works to the piazza to be undertaken in such a way that the Council could benefit from an upgraded surface and below ground works that would be capable of being used again for parking if nothing else. Please note however it is likely that a revised planning permission will be needed as by that time presumably the car parking use will have been superseded.



The fact also that the lease is for a comparatively short term seems also to be very much in the favour of City of York Council. We expect that English Heritage will wish to renew the lease in 2 years' time, presumably having spent so much money on the land in particular but also more generally into the overall visitor experience. In such circumstances the Council will be free to identify improved terms if it were minded so to do. This does not necessarily have to be the case but at least the Council would seem to be in a position to be able to recover possession if needed and also secure a valuable income from a good covenant going forward with greater security for the longer term. In looking at the package overall this is a significant improvement over the current short term arrangements for parking.

The transaction to transfer the freehold could be undertaken by way of a long ground lease as the more normal way of imposing restrictions on use and maintenance. In this case we understand English Heritage are not prepared to proceed without the freehold. We also understand that you are relaxed to proceed on the basis of a freehold sale having regard to the package of terms, the price to be paid and your belief that the covenants you propose can be made binding as a result of your significant land holdings surrounding. Ordinarily we would prefer such transactions to be undertaken by means of a long lease and the terms for which carefully drafted to avoid risk of enfranchisement. In this case we understand this will not be possible and taken as a package and from our analysis below can still recommend the transaction.

It seems to us in assessing the transaction that we should do so as part of a package of measures of which the temporary and permanent rental income is a part. Also it seems to us that we should look at the transaction in 3 ways, namely:-

- a. Based on the likely value for the current use of the blue and pink land, albeit the pink land is already under the guardianship of English Heritage.
- b. Whether it is likely that this blue and pink land might be of any significantly greater value for an alternative use to any other party; and
- c. Its value to English Heritage as a potential special purchaser.

In assessing each of these in turn it seems to us:-

1. Current use value

The blue, salmon and purple land currently generates an income in the order of £12,000 per annum and which following the transaction the Council will receive an income of slightly in excess of this amount but in two parts namely; £5,450 per annum in respect of the salmon land from English Heritage and the ability to relet the 9 spaces remaining on the purple land for at least another £9,000. On this basis it looks unlikely that the Council will be any worse off from the transaction.



2. Alternative use value

The Castle Car Park site undoubtedly forms a potential development opportunity and for which therefore it has a significant value for existing use but also a potentially higher value for redevelopment. It is impossible to quantify the extent to which the alternative use value of such a scheme would generate a price in excess of the existing use value which already would be high as a result of the high value car parking use. Nonetheless we would expect a premium price to be generated for any comprehensive redevelopment of the area. It is though open to very considerable debate whether the blue, pink and salmon land really would form part of any comprehensive redevelopment. This land is situated immediately adjoining one of the most important buildings within the City of York and to our knowledge formed a major part of the decision making criteria when assessing planning constraints for comprehensive redevelopment.

Furthermore, the subject area is situated directly at the entrance to the visitor facility and we would therefore assume significantly more important and therefore protected than other areas close to the tower. Put another way the setting back of buildings from the tower is likely to be even more important at the entrance.

It is also arguable that the salmon, blue and pink land does not really form part of the Coppergate II scheme as it is around the side of the facility and overlooking The Eye of York, again another highly important series of buildings and open space.

On this basis it is our conclusion that there is very limited prospect of any higher alternative use being secured on the blue, salmon and pink land as part of either a development in isolation or more likely as part of Coppergate II.

3. Special Purchaser Value

In light of items 1 and 2 above it might be assumed that the transaction is acceptable. In our opinion any such judgement can only be made once you have looked at the potential benefits that English Heritage may obtain by obtaining control of the land. There seems to be little doubt that English Heritage will not be able to construct a visitor centre purely on their own land. The facility already seems to be comparatively small and it is hard to understand how any smaller facility might actually provide a useful addition. Furthermore it appears extremely unlikely for any such facility in any case to be housed within the land within the existing red line boundary. On this basis it would appear that the only way in which English Heritage can construct its Visitor Centre is on land owned by the City Council.

On this basis we have therefore asked for and been provided with the business case attached within Appendix IV. As with all such situations we have no real way of interrogating the information. We assume it to be the honest and complete opinions of English Heritage but must flag that we have no real way of checking current visitor numbers and forming a view on anticipated increased revenue streams. Furthermore even then we would expect that these can only be broad brush estimates by English Heritage. It ought to have more access to information of similar situations but frankly this would appear to be a unique set of circumstances and as such any business case must also come with such a health warning.



On this basis however it does look like the scheme generates additional revenue streams for English Heritage but that the costs of developing next to such an important building and in the further and significant repair costs to the existing Tower does lead to an extended payback period of in the order of 14 years. We note from the figures also that there is no element of financing included within the figures and given that the costs are to be incurred upfront this ought significantly to extend the payback period. Also there is no provision for any increase in rent that you may require in respect of the area coloured salmon.

Accordingly, whilst it is necessary to make clear our caveats about the validity and reliability of the information, it does seem to us that as proposed the scheme does not make a significant net profit having taken into account all costs. On this basis it does not appear that English Heritage are making a "super profit" out of the arrangement and which ought therefore to be shared with the Council. Even if such a profit stream did appear likely to be generated then there would be additional issues about the division of such profits, particularly as they are by no means certain and English Heritage would be taking all of the risk. On this basis any such additional monies would have to be shared with English Heritage and in our opinion with a significant proportion of the monies (in our opinion, probably well over 80%) going back to English Heritage. As such it seems to us that the risk of such an under sale is comparatively small.

That said English Heritage are making a significant investment in the facility and it seems to us that something ought to be paid for the land. Within the size of expected investment such a payment would be comparatively small to English Heritage. Put another way, from a negotiation perspective it is hard to think that English Heritage will "lose" the opportunity as a result of a requirement for a relatively small payment for the legal rights. In addition whilst the Council ought to be put back in an equivalent position from a revenue perspective it will have sold some land and such sale might, it could be argued, makes the reletting of the piazza land more difficult in the event English Heritage do not renew for whatever reason. Again on this basis it seems that some payment ought to be made for the transfer of the freehold interest, particularly in respect of the blue land.

Additional Benefits to the City

We understand the argument that an improved visitor experience at Cliffords Tower benefits the City generally and as such that there may be additional knock on effects that benefit the Council from English Heritage making this investment. For the avoidance of doubt this report solely is in respect of the property transaction. We agree that it is appropriate for City of York Council to take account of these potential benefits in making its decision. However for the avoidance of doubt no such allowance has been made within our own calculations.

Advice and Recommendations

Having regard to the above we are of the opinion:-

1. That we should assess the proposed disposal of the land coloured blue and pink as part of the whole package of measures and not just as sales in isolation.
2. That on this basis the Council appears to be no worse off in terms of revenue from its land holdings and transactions.



3. That the transaction with English Heritage would not in itself appear to provide English Heritage with a super profit. English Heritage has to invest in excess of £5m at risk and which is likely to have a significant payback period, even more so if finance and holding costs are taken into account.
4. That on this basis the transfer of the land coloured blue and pink can be undertaken at relatively low value. It is our opinion though that there should be some consideration, as the blue and pink land ought to have some value to English Heritage. This is particularly the case in respect of the blue land. The pink land forms part of the Motte and is already subject to the guardianship of English Heritage. As such it has limited or no potential for alternative use and therefore value.

Also it is open to question that if the salmon land ever was returned to the Council that it might not necessarily be able to generate an income of at least £5,500 in isolation due to the awkward shape. In such circumstances, albeit we accept probably unlikely, it may well be that the blue land ordinarily would have been required for access and circulation space if nothing else.

We are advised the Council has agreed a sale consideration of £25,000 for the blue land. This is calculated on a simple site area basis having regard to the value of the blue, salmon and purple land currently. It seems to us that in respect of the consideration negotiated, whilst obtaining the other benefits to the scheme including the same and probably greater revenue from a better covenant on the remainder, then this transaction can be recommended.

5. Other factors. In addition we recommend:-
 - a. that in the construction of the piazza that this is undertaken in such a way as to be capable of being used for parking if ever returned to the Council. This would include both the above and below ground works to include structural stability, lighting and drainage.
 - b. We recommend the blue and pink land is transferred by means of a long ground lease or freehold transfer with restrictions on English Heritage effectively limiting use to what is now proposed and solely by them. Also to prevent alternative use which might then at least allow the Council to secure some form of share in any upside. We shall be happy to advise on these terms if required. We would though counsel against granting a ground lease which would allow English Heritage to serve notice to require the Council then to transfer the freehold interest at nil cost (i.e., enfranchisement). It is our understanding that as such this would require the ground lease to have meaningful terms, probably in respect of use and for instance not to be granted for a term probably in excess of 250 years but this requires detailed legal advice from your solicitors please.
 - c. That you include lift and shift provisions particularly in respect of the easements for services so that this does not prevent or sterilise anything else you propose for your retained land.
 - d. We assume that there are no other benefits that you might wish to secure from the construction works particularly to benefit adjoining land such as oversizing of services, access rights etc?

Conclusion

We trust this report covers all that you require and confirm that we shall be happy to meet and discuss our advice as required. Similarly we shall be happy also to advise in more detail in respect of any of the proposed restrictions.

Liability

Our valuation advice is provided for the stated purpose and is for the use of the addressee only and no responsibility is accepted to any other party for the whole or any part of its contents. In particular, our liability is not extended to any financial institution or similar party in the event of them obtaining a copy of this report.

Neither the whole nor any part of this report or any reference thereto, may be included in any document, circular or statement nor our opinions of value disclosed without our prior written approval of the form and context in which they will appear.

Yours faithfully

A handwritten signature in blue ink, appearing to read 'Andrew W Ellis', written in a cursive style.

Andrew W Ellis BSc (Hons) MRICS

Partner, Corporate Real Estate

RICS Registered Valuer

Authorised to sign for and on behalf of Sanderson Weatherall LLP

Enc.

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