

Appropriation of Land at Kathryn Avenue, Huntington Stadium, for Planning Purposes

Background

1. The Council acquires and holds property for various statutory purposes in order to perform its functions. The process of changing that purpose without changing the ownership is described as appropriation.
2. The Council has the power to acquire and hold property for various statutory purposes to perform its functions. In order to use land for a purpose other than the one for which it was acquired the land must be “appropriated” for a different use. Appropriation is a statutory process which allows the Council to transfer property within its ownership from one use to another.
3. Section 122 of the Local Government Act 1972 enables the Council to appropriate land for any statutory purpose for which it is authorised to acquire land. The Council must, therefore, determine that the land is no longer needed for the original purpose for which it was acquired and appropriate it for planning purposes.
4. Appropriation of the land for planning purposes requires the Council to consider the following factors:
 - that the appropriation will facilitate the carrying out of development, re-development or improvement on or in relation to the land or is required for a purpose which it is necessary to achieve in the interests of the proper planning of an area in which the land is situated;
 - that the proposed development, re-development or improvement works will contribute to the promotion of the economic, social and/or environmental well-being of the area;

- the provisions of the development plan, whether planning permission is in force and any other considerations that would be material to the determination of a planning application for development of the land;
 - that the land is no longer required for the original purpose for which it was acquired
5. Where land is appropriated for planning purposes, it is then held by the Council under the statutory provisions of Part 9 of the Town and Country Planning Act 1990. The practical consequence (by virtue of Section 237 of the Town and Country Planning Act 1990, as amended by Schedule 9 of the Planning Act 2008) is that the erection, construction or carrying out of any maintenance of any building or work on the land and subsequent use of the land is authorised under those planning powers, if the works are done in accordance with planning permission, even if they interfere with third party rights.
 6. The purpose of Section 237 of the Town and Country Planning Act 1990 (as amended) is to ensure that where land has been appropriated for planning purposes, then existing rights, which could prevent the development of that land from proceeding in accordance with the planning permission, can be overridden. The rights are overridden whether the Local Authority or a person deriving title from it undertakes the development. Persons who would otherwise benefit from those rights are entitled to claim compensation for the interference with them.
 7. The power contained in Section 237 of the Town and Country Planning Act 1990 (as amended) does not remove the legitimate rights of owners or occupiers as to compensation which may arise from the interference with such rights, but it does remove the potential for excessive claims and it also removes the potential for such owners or occupiers to frustrate the development by obtaining an injunction to prevent interference with their rights.
 8. On the 09 September 2014 Cabinet approved the appropriation of the land at Monks Cross South as part of a report on the Community Stadium Project. However no location/boundary plan was appended to that report.

The Scheme

9. As part of the York Community Stadium development land surrounding the existing stadium is required for development in order to provide sufficient room for the stadium and connected community hub building and the new planned leisure facilities to provide community programmes and access to a range of leisure venues.
10. The procurement process started in September 2012 under EU regulations and is now complete with a final scheme chosen and approved by Cabinet.
11. A final scheme has now been approved and as part of this process the land now needs to be appropriated under Section 122 of the Local Government Act 1972 so that the land is clear of any legal rights for the redevelopment of the scheme.
12. Land held by the Council under title numbers NYK195711, NYK317805, NYK158359, NYK80821 and NYK80822 are all affected and included in this request for appropriation, as shown in the plan in Appendix 1.
13. Various rights and easements exist on the titles. There is also the potential for claims that could be made in respect of title issues and covenants despite exhaustive checks. As the land is no longer required in its current use, the land can be appropriated for planning purposes under Section 122 of the Local Government Act 1972.
14. Section 237 of the Town and Country Planning Act 1990 will then apply in conjunction with the planning permission for the scheme, to override those rights that exist on the site subject to the persons with the benefit of those rights being able to claim compensation.
15. Any dispute about financial matters relating to the overriding of rights would be referred to the Upper Tribunal (Lands Chamber) for decision if it is not possible to resolve the issues on a voluntary basis.
16. The Council is responsible for the payment of compensation (if any) for the effect of the development upon the rights overridden. The red line for the development site is shown in the plan in Appendix 2.

17. Defective title insurance has already been acquired by City of York Council for the site from Aviva to cover any unknown rights that may exist affecting the area under development.

Analysis/Options

18. Appropriation of this land is required to enable the approved development of this site to take place. The consortia bidding have requested that this appropriation take place before the contract is completed and the development can commence.
19. The alternative option is to not to carry out this appropriation. This option is not recommended because:-
- a) the bidders have indicated they will not complete the contract and therefore no development will take place.
 - b) the Council's Leisure facilities would have no operator in place and therefore closure of the Huntington site would occur, or the facilities would have to become Council operated at significant cost to the Council.
 - c) the procurement may have to restart at considerable cost and delay to the Council.
20. Section 122 of the Local Government Act 1972 enables the Council to 'appropriate' to another purpose/use any land owned by the Council which the Council no longer needs for the purpose for which the land was originally acquired by the Council. Where land has been appropriated for planning purposes Section 237 of the Town and Country Planning Act 1990 enables the carrying out of any development/building works authorised by planning permission where those works interfere with any easement or covenant benefiting a third party subject to payment of compensation to such third party/parties).
21. Section 122(2A) requires that before appropriating any land consisting of or forming part of 'open space' the Council must advertise the proposed appropriation in two consecutive editions of a local newspaper and consider any objections received in response. In order to be 'open space' land must:

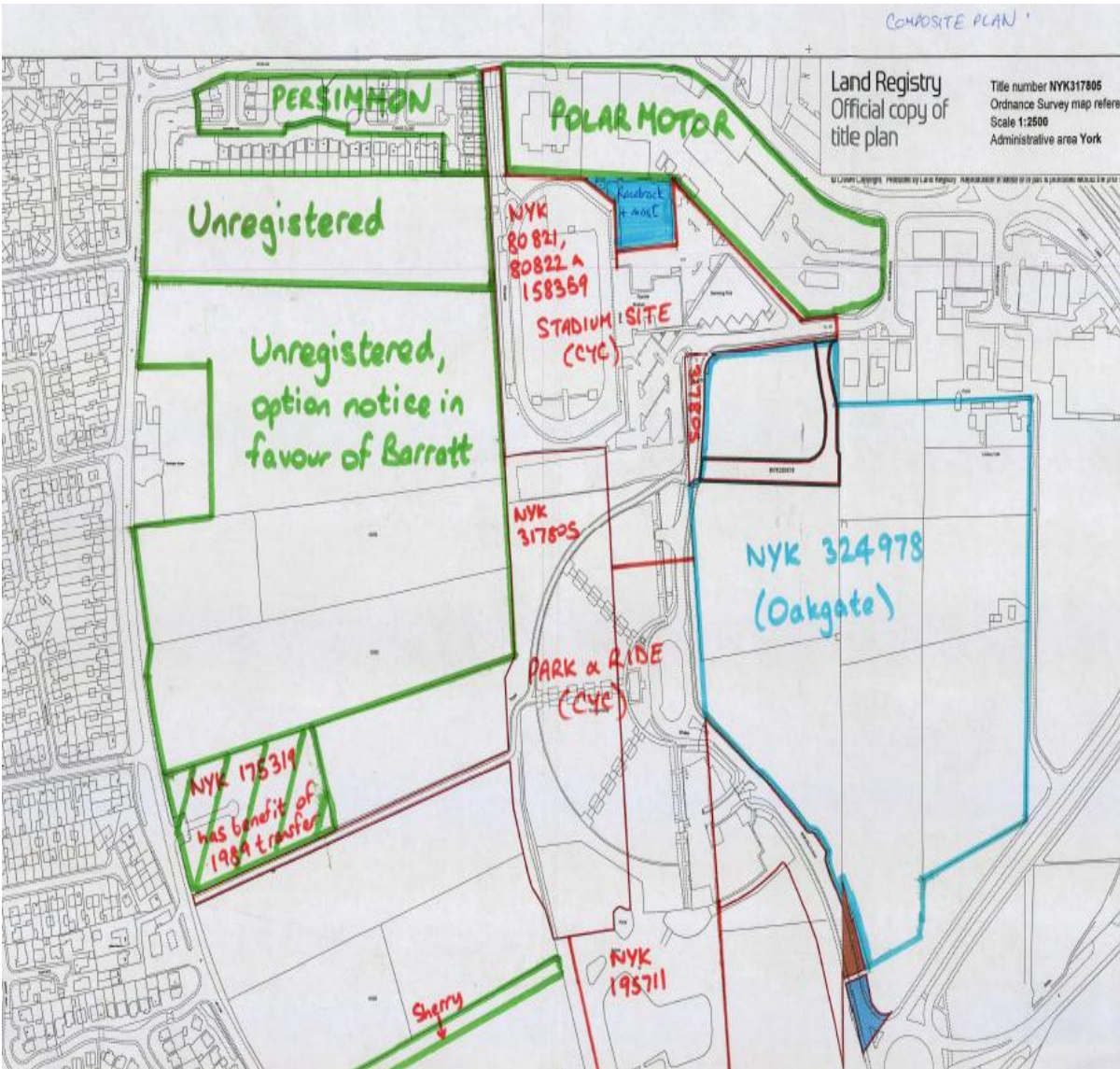
- (i) either have no buildings on it at all or at least 95% of the land should have no buildings on it and
- (ii) either be laid out as a 'garden', be used for recreation or lie as waste and unoccupied/vacant land (S.20 of the Open Spaces Act 1906)

22. It is not considered that the land edged red on the plan attached at Appendix 2 is 'open space' because it does not fall within the above criteria. Accordingly S.122(2)(A) would not apply so it is not considered necessary to advertise the proposed appropriation.
23. It is reasonable for the Council to use its powers in this case to appropriate the land for planning purposes as the appropriation will facilitate the carrying out of development, re-development or improvement works on the land and this which will contribute to the promotion of the economic, environmental or social well-being of the City.

Risk Management

24. If the appropriation is approved then contracts can be awarded and development can commence in due course thus removing the risk to the physical development.
25. A risk remains that compensation claims may arise due to the extinguishment of rights on the site.

Appendix 1 – Title Plan



Appendix 2 - Red Line Plan for the Huntington Stadium Site

