

Executive

26th 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.

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**Report
Approved**



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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