

Report of the Director of Housing Economy and Regeneration
Portfolio of the Executive Member for Finance and Performance

Securing the Future of the Bootham Park Hospital Site

Summary

1. This report sets out the terms that have been negotiated with NHS Property Services Limited (**NHSPS**), their preferred development partner Enterprise Retirement Living Limited (**ERL**) and the York and Scarborough Teaching Hospitals NHS Foundation Trust (**the District Hospital Trust**) to help secure the future of the former Bootham Park Hospital (**BPH**) site.

For the purposes of this report the BPH Site and the District Hospital Trust Site shall be referred to as **the Combined Site**.

2. On 21st January 2020 Executive agreed that the council would use its rights as the owner/landlord of a strip of access road to the Combined Site (over which NHSPS and ERL need to negotiate a longer lease with the Council) in order to secure:
 - a. Beneficial public use of the parkland in front of the hospital building;
 - b. Improved pedestrian and cycle routes through the Combined Site as part of the city's sustainable transport network; and
 - c. Conversion and redevelopment of the BPH Site to deliver homes and services which are of benefit to the City.
3. Negotiations have now been finalised and this report outlines the details of the secured outcomes:
 - a. Securing approximately £1.9m investment into the public realm, at nil cost to the public purse, as part of the developer's £75m investment into the project.
 - b. Preserved and Improved Pedestrian and Cycle Routes with the majority of the cycle route to be on low car use or segregated paths.

- c. Public, Curriculum and Sports use of the Lawns with new paths and facilities to enhance the use of the lawns and the provision of an 11-a-side and a 7-a-side football pitches.
 - d. Protection of the Air Quality Monitoring Station (AQMS) site.
 - e. Continuation of the Landing Place for the Air Ambulance.
 - f. Protection and restoration of the Historic Boundary Railings.
 - g. The Receipt of a Capital Premium and Share of Overage receipts.
4. The negotiations have been driven by the comments collected via extensive public consultation. In response to these comments we have been able to:

Consultee Priorities	Negotiated Outcomes
a. Public use of the Parkland;	The majority of the open Parkland in front of the hospital will be available for public use at all times.
b. Preserved pedestrian and cycle routes; and	A 999 year lease will secure, as of right, the continued pedestrian and cycle use of paths across and through the Site, as set out in the report and with a final specification of Improvement Works to be agreed.
c. A sustainable and desirable use of the historic buildings.	The proposed development will deliver a retirement care community in the heart of the city with low carbon heating and other sustainable features.

5. It should be noted that any final agreement will be subject to the award of satisfactory Planning Permission for the proposed redevelopment of the BPH Site by ERL (which will be determined by the Planning Authority) and to the acquisition of the freehold ownership of the BPH Site by ERL from NHSPS, in accordance with the provisions of an Agreement for Sale made between NHSPS and ERL, the provisions of which are confidential as between NHSPS and ERL.

Recommendations

6. The Executive is asked to:
- 1) Note the good progress made by officers in negotiating and securing the desired outcomes of continued beneficial use of the parkland and improved pedestrian and cycle routes through the Combined Site required from the redevelopment of the BPH Site as identified by citizens and stakeholders during extensive public engagement in 2018 and 2019.

Reason: To confirm that the aspirations of citizens and stakeholders concerning beneficial use of the parkland and improved pedestrian and cycle routes through the Combined Site can be secured.

- 2) Note that, as part of the negotiated agreements, a financial consideration will be paid to the council in exchange for the council granting ERL a lease of the Accessway for a term of 999 years (“the Accessway Lease”).

Reason: To confirm that best value consideration has been secured.

- 3) Authorise the establishment of a set of legal Agreements and Leases as set out in the Legal Implications section and at **Annex 2** of this report in order to:
 - a. grant the Accessway Lease;
 - b. receive the payment of a Premium and the proceeds pursuant to the terms of an Overage Share Agreement;
 - c. secure, for a 999 year term, public access to and use of the majority of the Parkland in front of the hospital buildings as well as sport and curriculum use;
 - d. secure the right of access for pedestrians and cyclists at all times and for all purposes through the Combined Site; and
 - e. by way of a Development Agreement, the improvement of the Parkland, the pedestrian and cycle paths and the railings that surround the BPH Site.
- 4) Delegate to the Director of Housing Economy and Regeneration to agree the final specification of the Pedestrian and Cycle Path Works in consultation with the Executive Member for Finance and Performance and the Executive Member for Transport.
- 5) Delegate to the Director of Governance in consultation with the Director of Housing Economy and Regeneration to finalise the terms of and for the council to enter into these Agreements and Leases.

Reason: So that the council can secure beneficial public use of the majority of the parkland in front of the hospital building and improved pedestrian and cycle routes through the Combined Site delivering on the priorities of York citizens and stakeholders as expressed during extensive consultation in 2018 and 2019.

Background

7. The former Bootham Park Hospital site (**the BPH Site** shown edged red on the Plan in **Annex 1a**) is a key feature of the health estate in York both because of its long-term historic links with mental health care in the city (it was one of the first, purpose built, mental health hospitals in the UK), and because of its proximity to the York District Hospital next door (which is owned by the District Hospital Trust).
8. The Grade 1 listed building opened its doors in 1777, one of the first purpose-built mental health 'asylums' in England. For the next 240 years the hospital's, at times controversial, history reflects the country's changing social attitudes and medical approaches to mental health. Those approaches finally outgrew the hospital in 2015. It closed after proving unable to provide an appropriate environment for modern mental health services. These modern mental health services now provided in a new £37 million, 72-bed, hospital on Haxby Road, called Foss Park Hospital. The state-of-the-art facility provides two adult, single sex wards and two older people's wards – one for people with dementia and one for people with mental health conditions such as psychosis, severe depression or anxiety.
9. The BPH Site is 17.85 acres of land and buildings owned by NHSPS. It is in the heart of the city and, subject to sensitive and imaginative redevelopment, is a valuable asset that could be realised for the social and economic benefit of York.
10. The Council has worked with colleagues from the District Hospital Trust and others to champion the positive future for the Combined Site. This has included extensive public and stakeholder engagement in 2018 and the autumn of 2019, the lobbying of government and market engagement to influence the views of those wishing to buy the BPH Site.
11. The current owner of the BPH Site, NHSPS is tasked by central government to sell the BPH Site and it has selected ERL as the preferred purchaser. ERL propose to redevelop the BPH Site to provide an independent living retirement community for older people with the BPH Site to be owned and managed under their single ownership.
12. ERL are an established provider of retirement accommodation. Their first retirement community opened in 2010. They have recently completed a scheme in Ripon in partnership with Barnardo's (who had previously owned the site) and have successfully converted a grade 2* listed building in Worcester. ERL's business model is to be the long-term custodian of their sites as they own, develop and operate all of their four integrated retirement communities. ERL are an active member of the

recognised standards organisation for retirement housing, called ARCO (Associated Retirement Community Operators).

13. The ERL proposal and the commitments made by NHSPS have the potential to deliver many of the features and services set out in the council's Development Plan for the Combined Site, including:
 - a. Public use of the Lawns;
 - b. Pedestrian and cycle routes through the BPH Site and the District Hospital Trust Site;
 - c. The use the historic buildings for Extra Care Housing for older people. This use fits well with the council's older persons' accommodation strategy - all extra care accommodation in the city centre is currently within the affordable housing sector while our research highlights that this type of accommodation for home owners is much sought after;
 - d. Emergency landing of the air ambulance; and
 - e. Preservation of the integrity and access to the District Hospital Trust Site so that this can be developed, at a later date, to deliver medical training facilities and other hospital services.
14. Since their appointment as preferred purchaser, ERL has consulted with key stakeholders and developed a comprehensive proposal for the development of 170 Extra Care 1, 2 and 3 bed apartments for older people and associated communal facilities contained in refurbished parts of the Heritage buildings and in new build accommodation that will replace lower-grade heritage assets and on land behind the chapel and replacing existing office/treatment buildings on the driveway. ERL have submitted, in September 2021, an application for planning consent and an application for listed building consent to its proposals. If consented, the development would deliver the 170 units of accommodation, communal facilities and services, 24-hour staffing via 70 on-going jobs as well as those jobs created during construction will have a beneficial impact upon the city.
15. The scheme proposed by ERL Bootham Park will only be able to be purchased by people over 60 years of age and for their own use only. Experience from similar retirement village developments show that at least three-quarters of homes are usually sold to local people, freeing up existing family homes for re-use. New homes on the Bootham Site have the potential to count against the overall new homes target for York.

16. The ERL investment will also secure benefits to the wider community including public access at times to areas of the main building which are of particular interest. Their design proposal incorporates renewable energy sources for all heating along with sustainable construction and a secured low carbon ongoing operation, addressing the sustainability and air quality concerns raised during public consultation on a Master Plan for the Site.

The Agreements Secured

17. Officers have engaged with NHSPS, it's preferred developer ERL and others in order to secure the desired outcomes from the re-development of the BPH Site via the leverage of the council's ownership of the Accessway (a 0.064 acre area of land shown coloured green on the Bootham Park Hospital Site Plan at **Annex 1a**), which serves as the main point of vehicular access between the Combined Site and the adopted highway at Union Terrace. The Council is the freehold owner of the Accessway as it forms part of the council's property holdings.
18. On 20th May 1992 the Council granted a lease of the Accessway (the 1992 Lease) to The Secretary of State for Health (at that time being the freehold owner of both the District Hospital Site and the BPH Site) until 19th May 2117. When the BPH Site was transferred to York Hospitals National Health Service Trust from Selby and York Primary Trust pursuant to a transfer dated 30th August 2006 (**the 2006 Transfer**) a right of way over the Accessway (for the remaining duration of the 1992 Lease) was granted to the owner of the District Hospital Site. The current tenant of the 1992 Lease is The York Teaching Hospital NHS Foundation Trust (**the District Hospital Trust**).
19. NHSPS (the current owner of the BPH Site and beneficiary of the right of way over the Accessway granted in the 2006 Transfer) and their preferred purchaser, ERL, need to enter into new legal arrangements with the council to extend the duration of the use of the Accessway which provides vehicular access to the BPH Site; as the remaining/unexpired duration of the 1992 Lease is not commercially long enough for residential development purposes.
20. Guided by the Executive decision of 21st January 2020, Officers have negotiated the following:
 - a. that the 1992 Lease is surrendered by the District Hospital Trust, consented to by NHSPS and ERL in order to allow for sufficient rights of way over the Accessway to be put in place;
 - b. that a new right of way easement in perpetuity over the Accessway is granted to the District Hospital Trust (and those authorised by it)

("the Accessway Deed of Easement") so that they can continue to access the District Hospital Site (including land at Bootham Court) and, in the future, develop the relevant part of the District Hospital Site subject to planning consent; and

- c. that a new, 999 year Lease is granted to ERL for use of the Accessway as an access route to serve the BPH Site (the Accessway Lease). The Accessway Lease will be subject to the Accessway Deed of Easement.

- 21. The new Accessway Lease and the Accessway Deed of Easement will require the tenant of the Accessway Lease to maintain the Accessway, hold relevant insurance, ensure public access (for pedestrians and cyclists), not obstruct the Accessway and, if these obligations are not honoured, allow the council or the District Hospital Trust/grantee of the Accessway Deed of Easement to step-in and rectify the problem and then reclaim any incurred costs from the tenant of the Accessway Lease. In addition, ERL will be required to provide and maintain the new pedestrian and cycle path through the BPH Site, maintain and allow public access to the Lawns, provide land for the Air Quality Monitoring Station and maintain the Railings around the Parkland, affording the Council with legal step-in rights to undertake maintenance works and re-charge to assure compliance with obligations.
- 22. A Development Agreement to be entered into by ERL will ensure that an estimated £1.9m of Improvement Works to the Lawns, the pedestrian and cycle route and the railings are carried out in a timely way, at nil cost to the public purse. ERL will be prevented from selling newly developed homes on the BPH Site until those Improvement Works are satisfactorily completed, in line with the following steps:
 - a. The sale of the existing Gatehouse at any time;
 - b. The sale of 65% of new homes upon completion of improvements to the Parkland, initial works to the pedestrian and cycle paths and the restoration of the railings to the Bootham, Bootham School and carriageway boundary;
 - c. The sale of an additional 15% of new homes once the Sports Pitch works are completed;
 - d. The sale of an additional 10% of new homes upon completion of the restoration of the railings on the boundary with the railway line; and
 - e. The sale of an additional/final 10% of new homes once the final works to the pedestrian and cycle paths are completed.

23. ERL will pay a premium to the Council for the granting of the new Accessway Lease. In addition NHSPS will enter into an Overage Share Agreement with the council whereby NHSPS will be contractually bound to pay to the council a proportion of any overage monies (enhancement in sale values) which NHSPS receive in the future from ERL under a separate Overage Deed being entered into regarding redevelopment of the BPH Site.

Preserved and Improved Pedestrian and Cycle Routes

24. Agreement has been reached with both ERL and separately with the District Hospital Trust to establish and maintain, for a 999 year term, a right of access for pedestrians and cyclists through the Combined Site (see Plans, **Annex 1b**).
25. Once they take ownership of the site, ERL will co-operate with council Highways colleagues to open up the Bootham gates for use by cyclist, if not achieved before that date, and co-ordinated with the installation by the council of a new crossing into St Mary's. The District Hospital Trust will open up the entrance gates to Bridge Lane in order to facilitate cycle use. In both places a bollard will be installed to prevent vehicle use.
26. Other initial works to the pedestrian and cycle paths include:
- a. The crown lifting of all trees along the existing carriageway and the removal of the laurels close to the Bootham Gates in order to ease visibility and usability;
 - b. The carrying out of any necessary maintenance of existing lighting along the route;
 - c. The removal or propping open of the white chicane gate close to the historic hospital building in order ease use of the existing cycle path;
 - d. The installation of a temporary footpath at the junction of the BPH Site and the Accessway; and
 - e. The erection of two removable bollards as a means to prevent parking in front of the Cycle Path adjoining the Bridge Lane Gates.
27. The lighting provision of the paths will be upgraded to include additional lighting to the Site and, in particular, low level lighting on bollards along the route of the pedestrian and cycle path. The detailed lighting design will be developed in partnership with Highways and Ecology colleagues in order to ensure that the route is safe for use at night but also to limit the impact upon bat and other fauna who forage in and live at the Site.

28. Within both the BPH Site and the District Hospital Site, the route will be constructed, maintained, insured, signed and lit in accordance with a detailed specification to be approved by highways officers of the council, at the expense of ERL with the Council to have rights to “step-in” and rectify the problem and then reclaim any incurred costs from the landowner if these obligations are not honoured. These principles of enhancement and improvement to the Pedestrian and Cycle Path have been agreed as part of this negotiated outcome.
29. The existing pedestrian and cycle route lying within the BPH Site may be varied during the Construction Period at the developer’s cost and as agreed between ERL and the Council but at all times a suitable alternative route, which is properly signed, must be available for use.

Public, Curriculum and Sports use of the Lawns

30. We have secured the preservation and public, sports and curriculum use of the Lawns (forming part of the Parkland, located in front of the hospital buildings) and as shown edged blue on the plan labelled the Lawns area and the Sports Pitches (**Annex 1c**). A series of 999 year leases of the Lawns (to be made between each of ERL, NHSPS and Bootham School with the council holding control over the honouring of obligation by the parties via a lease, covenants and step-in rights), will allow public, sports and curriculum use of the Lawns.
31. Children’s Services report (in 2020) shortfalls in external curriculum space at four local primary schools:
 - Park Grove primary [42% shortfall]
 - Haxby Road primary [70% shortfall]
 - St Wilfrid’s primary [87% shortfall]
 - Clifton Green primary [10% shortfall]

Bootham School also experience a shortfall in outdoor curriculum space and are therefore motivated to take on responsibility for the Lawns and deliver curriculum use for their own pupils as well as those of other local schools. At the same time they will deliver public access to the Lawns will maintain and insure them, at no cost to the council.

32. Bootham School report on their proven track record of working collaboratively with the local community and neighbouring schools. Public Benefit work is a stated key objective for the school and one that the senior leadership team and Governors are committed to further enhancing. They see the development of the Lawns as a unique and exciting opportunity to help achieve this. The school will be committed to offering weekly access for PE lessons to local state schools who are the

most deprived of access to playing fields including Park Grove Primary, Haxby Road Primary, St Wilfrid's Primary and Clifton Green Primary. The school is committed to work with these schools to offer them access to enhance their curriculum. Indeed, this will build upon existing relationships with two of these schools who currently use the Bootham School swimming pool for swimming lessons. Bootham School already have an excellent relationship with Clifton Green Primary and as recently as the end of the 2021 summer term, loaned their entire junior school to them for the last week of their term whilst urgent repairs were carried out to the Clifton Green Primary School site.

33. The entirety of the Lawns will be available for public use at all times.
34. Use of the Sports Pitches area (shown edged green on the plan at **Annex 1c**) and being a sub-set of the wider area, will be limited during the school day and during term time. Bootham School will have exclusive use of the Sports Pitches between the hours of 09:00 to 16:00 on Monday to Friday and on Saturdays from 09:00 to 12:00 during Bootham School term time only. This will enhance the outdoor education opportunities for the 485 Bootham School senior students, 80% of whom live within twenty minutes of the school, which demonstrates the positive impact this will have on local young people.
35. In addition, other local schools will have 3 one-hour slots per week during the above Monday to Friday times as well as have activity club use 16:00 to 17:00 on weekdays [during school term times] and local community junior football club/s will be encouraged to use the pitches for Sunday morning games and outside of Bootham School term times. Bootham School will establish a suitable booking system for use of the Sports Pitches. Any charges will be on a 'not for profit' basis and subject to appropriate grounds management to let grass recover etc.
36. This arrangement will bring much-needed sports pitches into the Guildhall Ward, at nil cost to the public purse, and will also allow public use of the surrounding area at all times and the sports areas when they are not needed for curriculum use. Signage will exclude exercise of dogs over the Sports Pitches. Dog exercise to be directed to the pathways around the Lawns.
37. It is intended that ERL and Bootham School will (within the proposed lease documentation relating to the Lawns) give the council direct covenants committing to permit and facilitate use of the Lawns by local schools, community groups and the wider public.
38. Bootham School will develop, in consultation with ERL, the council and stakeholders, areas within the Lawns for other activity, for example a

conservation area and for public events such as an annual gala in aid of mental health and wellbeing. These areas will also be accessible to the public and other schools for extra-curricular activities. An annual management plan will be prepared, consulted upon and implemented.

39. A Development Agreement will oblige ERL to carry out improvement works to the Lawns. These works include:
- a. Construction of a new accessible perimeter exercise and dog walking route made up of new self-bound gravel footpaths - a main pathway 2m wide (989 m²) and secondary footpaths (82 m²) together with dog waste bins (5) and litter bins (5). This circular pedestrian route and nature trail which, subject to planning consent, is to be located within the Lawns area will be available for use by members of the public at all times.
 - b. A large area of land for picnic and informal sports; accessible picnic tables (5).
 - c. Term-time sports pitches provided and managed by Bootham School for their use as well as use by other local schools and sports teams:
 - i. an 11-a-side football pitch;
 - ii. a 7-a-side football pitch; and
 - iii. Required Sport England 'run-off' areas around the perimeter of the Sports Pitches.

Pitches will be constructed to a high quality, following Sports England recommended standards.
 - d. Sensory and edible planting including raised planters (18 in number)
 - e. Flexible break-out spaces including seating and spaces for contemplation; parkland benches (16), feature curved parkland seating, (3) and hardstanding to feature areas (120 m²)
 - f. Natural play equipment within the perimeter woodland; natural play area surfacing (80 m²) and natural play area equipment pieces (2)
 - g. Biodiversity enhancement measures including native tree and shrub planting, bird and bat box provision and varying mowing regimes

40. These arrangements will give life to the NHS's ambition for Healthy Places as laid down by Public Health England in 2018 as part of its Healthy Places programme.
41. The smaller portion of the Parkland and closest to the historic buildings will be retained by ERL and will be used as the landing site for the air ambulance and by their residents only.
42. There will be a net gain in trees as a result of the proposed overall development of the Site with approximately 190 new individual trees plus new hedgerow and ornamental beds to be planted.

Protection of the Air Quality Monitoring Station (AQMS)

43. Previously undocumented arrangements will be formalised into a 999 year Lease to the Council of the AQMS site that will allow for the AQMS to remain on the BPH Site, as shown on the plan labelled the Air Quality Monitoring Station and the Helicopter Landing Place, **Annex 1d**.
44. This will secure the site of the current AQMS (which is provided in partnership with the Environment Agency), will provide parking and allow access for maintenance and works (for both the council, and for the Environment Agency) and will secure a metered electricity supply to the AQMS site. The Environment Agency will take responsibility for payment for electricity consumed; this is currently paid by NHS Property Services. A new AQMS cabin will be installed by the Environment Agency in 2022 or soon after.
45. The Council will have the right to surrender the AQMS lease should it no longer be required. The council will manage and maintain the AQMS in partnership with DEFRA, the Environment Agency and their contractors/advisors.

Continuation of the Landing Place for the Air Ambulance

46. The helipad in the parkland which is used by the Air Ambulance to land and take off, will remain, as shown on the plan labelled the Helicopter Landing Place, **Annex 1d**. A formal agreement between ERL and the District Hospital Trust will maintain the current arrangement and while the Air Ambulance does not land often, the right to land is important to the proper operation of York District Hospital.

Protection of the Historic Boundary Railings

47. The historic railings around the Lawns and the wider site will be repaired and maintained by ERL, addressing problems listed in the 2017 Bootham Park Hospital Railings Condition Survey. The estate fencing to the east

of the Lawns will also be repaired and maintained by ERL. These obligations will be secured by the Development Agreement and by landlord's covenants within the proposed Accessway Lease that will be entered into by the parties, including rights that allow the council to step-in and rectify any breach of obligations, charging the tenant of the Accessway Lease any costs incurred.

The Receipt of a Capital Premium and Share of Overage

48. ERL has agreed to pay the council a capital premium for granting the new Accessway Lease and NHSPS have also agreed to pay the council a share of any overage monies (such as the betterment in sale values achieved by the developer compared to initial assessments of value) which NHSPS receive from ERL in the future.

Conditionality

49. All of the above leases and easements will only be entered into if and when both:
- A grant of “satisfactory” planning permission is obtained (as defined within an Agreement for Sale which has been entered into between NHSPS and ERL); and
 - The related acquisition of the BPH Site by ERL has taken place (which is likely to be within 30 Working Days of the date of confirmation by ERL that a “satisfactory” planning permission has been obtained).
50. The Facilitating Documentation will be completed on the same date as the Transfer Completion Date, and on that same date the Council will receive the Premium from ERL in return for granting the Accessway Lease. The Facilitating Documentation will be in agreed form as at the time each of the Agreement for Surrender and Easement, the Agreement for Accessway Lease, the Agreement for Lawn Leases and the Development Agreement is exchanged, to ensure that there will be no delays to anticipated completion. Timing is not yet certain but is expected by mid-2022 so long as the planning application process proceeds as expected.

Consultation

51. In the winter of 2018/9 the council worked with the District Hospital Trust (owner of the adjoining District Hospital Site) and other stakeholders to draw up a Site Development Plan for the Combined Site and adjacent publically owned land (“**the Development Plan**”). This plan was devised

following extensive public and stakeholder engagement. The Development Plan was published in July 2019.

52. In the autumn of 2019 a further engagement exercise on the Development Plan was undertaken. During this engagement we sought views on the published Development Plan and asked people to prioritise their preferences for the Combined Site and the adjacent publically owned land. The engagement exercise reached 1323 people and generated 1657 items of feedback.
53. The results of the feedback were comprehensively reported to Executive in the report titled **Shaping the Future of the Bootham Park Hospital Site**, dated 21st January 2020.
54. The conclusion drawn from consultation was that the council's priorities for shaping the future of the Combined Site and the adjacent publically owned land should be as follows; the negotiated proposals set out in this report deliver positively against these priorities:

Consultee Priorities	Negotiated Outcomes
a. Preservation and public, sports and active leisure use of the Parkland in front of the hospital buildings;	The majority of the open Parkland in front of the hospital will be available for public use at all times with the developer, NHSPS and Bootham School investing in paths, benches and landscaping to enhance use, and also providing an 11-a-side and a 7-a-side football pitch for sports use by Bootham School and other local schools.
b. Continuation and enhancement of pedestrian and cycle routes across the Combined Site from Bootham to Clarence Street and onto the District Hospital Site at Bridge Lane;	A 999 year lease will secure, as of right, the continued pedestrian and cycle use of paths across and through the Site. Furthermore, the pedestrian and cycle paths will be improved and pedestrians will be segregated from cycles and vehicles (other than at cross-over points) and, for the majority of the route; cyclists will use a dedicated cycle path or a low-traffic shared carriageway, an improvement on current arrangements, with a final specification of improvement works to be agreed.
c. Achieving a sustainable and desirable use of the historic buildings,	The proposed development will deliver a retirement care community in the heart of the city, providing 170 homes to buy, with extensive communal facilities, support and

<p>ideally one that gives life to its historic care and mental health uses by, for example, providing accommodation with care for older people including those living with dementia; and</p>	<p>care available on site. The provision of services such as a daily hot meal and the availability of care support services will allow residents with disabilities including dementia to live safely in this location.</p> <p>Extra Care Housing for older people on this site fits well with the council's older persons' accommodation strategy - all extra care accommodation in the city centre is currently within the affordable housing sector while our research highlights that this type of accommodation for home owners is much sought after but not yet available in the city centre.</p>
<p>d. Delivering value to neighbouring Landowners City of York Council and District Hospital Trust to ease access to the BPH Site and to enable the development of health care and medical facilities on the Bootham Court land (which forms part of the District Hospital Site).</p>	<p>We have secured an estimated £1.9m investment in the parkland, sports pitches, pedestrian and cycle paths and railings restoration, at nil cost to the public purse. In addition, we have secured a sizable capital payment in exchange for the extension of the lease over the Accessway.</p> <p>The interests and access rights of the District Hospital Trust have also been preserved and enhanced, allowing them to make best use of the Bootham Court land which they own, formerly the site of nurses' accommodation.</p>

55. The main concerns expressed were:

Consultee Concerns	Negotiated Outcomes
<p>a. Traffic congestion;</p>	<p>Vehicle access to and from Bootham will be closed off, leaving this route onto the site for the exclusive use of pedestrians and cyclists.</p> <p>Vehicle access to the site via Clarence Street/Union Terrace will remain as previously used but with the expectation that vehicle movements are expected to be fewer than when it was an active hospital.</p>

	The developer assesses the traffic impact as follows: “the travel demand generated by the [retirement community] will be significantly lower than when it was in operation as a hospital, particularly during the traditional highway peak periods. Vehicular impact will be negligible on the operation of the existing road network and its junction”.
b. Air quality; and	<p>The new development will deliver a “clean heating” solution for the site, relying on air-source heat pumps, solar panels and mains electricity to power and heat the 170 homes and the communal parts. This will replace the current gas fired main boiler. Reduced car journeys to and from the site will also benefit air quality.</p> <p>We have secured a 999 year lease to allow the Air Quality Monitoring Station that the council runs on the site on behalf of the Environment Agency to remain. The AQMS will, therefore, continue to provide data on air quality in this area well into the future.</p>
c. Suitable design of new buildings.	While all grade 1 listed buildings and the majority of the grade 2 listed structures will be retained, renovated and converted to their new, residential, use, some new build is proposed, both to the north-west but set back from the main building, around the chapel and on the carriageway.

Council Plan

56. Our interest in the future of the BPH Site is closely linked to York Council Plan, Making History, Building Communities. Best use of the Lawns (forming the majority of the Parkland) on the BPH Site, an improved pedestrian and cycle route and less vehicle traffic in the area will contribute to a **Greener and Cleaner City** and **Getting Around Sustainably**. Good accommodation for older people, particularly those living with dementia and structured sport and active leisure on the BPH Site will help us achieve **Good Health and Wellbeing** and **Creating Homes and World-class Infrastructure**. Sports and open space use of the Lawns (forming the majority of the Parkland) will help address the deficit of outdoor curriculum space in local schools, allowing for a **Better**

Start for Children and Young People. The preservation of the historic building at the BPH Site and uses and access which allow people to understand their history and significance will help us achieve **Safe Communities and Culture for All.**

57. The secured agreements put forward in this report have been drawn up in light of extensive public and stakeholder engagement and are shaped by the views expressed during public engagement, demonstrating that we are **An Open and Effective Council.**

Implications

Financial

58. Our work to prepare the Bootham Park Site Development Plan, including project management, and the subsequent negotiation of the desired outcomes has been funded from the £155,000 One Public Estate Round 5 grant awarded in October 2016. The majority of this grant has now been spent.
59. Via the negotiation of Agreements and the issuing of new Leases a sizable capital receipt will be realised. The values of the receipt and potential overage values and payment dates are shown in the **Confidential Annex.**
60. As with all property transactions there may be SDLT implications which we will ensure are minimised in consultation with our tax advisers.

One Planet Council

61. The agreements proposed in relation to the BPH Site (and to the part of the District Hospital Site over which the District Hospital Site Pedestrian and Cyclists Path is located) and the Accessway, deliver sustainable transport, public open space, health, housing and care benefits to the city.
62. A 'Better Decision Making' Evaluation has been undertaken and was reported to Executive on 21st January 2020. The evaluation was positive and identifies that the proposed uses of the Site will bring **Equity & Local Economy** benefits to the Fifth Quarter trading area at Gillygate and Bootham and will deliver jobs in the care sector. £75m of inward investment will also flow. **Health & Happiness** will benefit from sport and active leisure use of the Lawns and from the provision of dementia care services. **Sustainable Transport** benefits will result from the retention and improvements to pedestrian and cycle routes through the Combined Site. The preservation, re-use and interpretation of the significant historic buildings on the Site will bring **Culture & Community**

benefits and well as positive **Zero Carbon** and **Zero-waste** outcomes. Many **Local & Sustainable Food and Land Use & Wildlife** benefits can be achieved via a positive plan and uses for the Parkland, in particular, the Lawns.

63. Equality benefits are many and include care for those living with dementia, space for external curriculum activities for local schools and space which low income groups can use and enjoy.

Legal

64. The council has statutory powers authorising it to enter into legal agreements for the acquisition or disposal/granting of interests in land, including granting leases and rights of way easements to third parties.
65. It is considered that the entry into the proposed Facilitating Documentation (the Agreement for Surrender and Easement, the Agreement for Accessway Lease, the Agreement for Lawn Leases and the Development Agreement) which are consequent upon the proposed preceding conditional Agreements is the most appropriate legal structure/method for facilitating the proposed redevelopment of the BPH Site whilst also delivering the other benefits to the council and the public referred to in this Report. A number of legal documents, including the Accessway Lease, will then be entered into; these documents are detailed in **Annex 2 - Details of the Legal Agreements Proposed to be Entered Into**.
66. The existing right of way over the Accessway serving the BPH Site and the District Hospital Site would expire on 19th May 2117 (when the term of the 1992 Lease would end) and so would mean that (without the longer term usage rights to be granted by the proposed Accessway Lease) would mean that the BPH Site would not be considered to have good and marketable title for residential development purposes.
67. NHSPS, ERL, the council and the District Hospital Trust will (as appropriate), pursuant to the Facilitating Documentation, be contractually obliged to enter into these further legal agreements upon and on the same date as the completion of the acquisition of the freehold interest in the BPH Site by ERL.
68. The Public Contracts Regulations 2014 oblige public authorities to procure any 'works contract' where the value of the 'works contract' exceeds the relevant threshold for such a contract specified in those Regulations (at present the threshold amount is £4,733,252). The various works that will be undertaken as part of these Agreements do not, in value, exceed the threshold and are estimated to be approximately £1.9m.

Property

69. This report deals with the property considerations relating to the Combined Site and the re-development of the BHP Site and details the many benefits that have been secured via the exercise of our land holding rights.
70. The negotiation of the new agreements and desired outcomes also deliver a financial consideration paid by ERL to the council in exchange for the Council granting ERL the extended lease of the Accessway. Given the current rental value for the Accessway is nil and will be nil for the duration of the remainder of the lease, the consideration as detailed in **Confidential Annex** is considered good value, along with the considerable public realm benefits secured, which have been costed at approximately £1.9 million.

Planning

71. The Council's Draft Local Plan identifies the Site as "existing health care facilities" with the green space in front as "existing open space" and insists that "future consideration of the Site must follow a full appraisal of the significance of the historic buildings, landscape and archaeology on site". Extensive studies have been undertaken by the current owner, NHSPS, and have guided the proposals developed by ERL.
72. A planning application and listed building consent application has been submitted for the proposed re-development of the Site. The main application is ref. 21/02108/FULM and the listed building application is ref. 21/02109/LBC. Included in the ERL proposal is the demolition of some existing structures, namely the listed Pauper Wings to the northwest of the main building and adjacent to the railway line, as well as the unlisted estate cottages on the driveway, to make way for new build and sustainable accommodation, an approach reflected in the council-led master plan developed in 2018 and 2019.

Highways

73. Negotiations have secured agreement that the access to the Site off Bootham should, once the development is complete, only be used by pedestrians and cyclists and we will work with the developer to bring forward new junction controls at St Mary's planned for 2022.
74. Access to the Site was always available from Union Terrace and Clarence Street and this will now be the only entrance to the completed Combined Site for vehicles. The capacity of this access way to accommodate the new uses and any design changes to the road layout will be evaluated during consideration of the planning application; initial

indications suggest that the new use will generate no more traffic movements than the previous use.

Risk Management

75. The proposed approach does offer a “commitment risk” risk to the council. However, it is believed that this risk can be appropriately managed and mitigated. All legal agreements are confirmed as “subject to the acquisition of the freehold interest in the Site by ERL from NHS Property Services”, which in itself is subject to the grant of a “satisfactory” planning consent. Accordingly, until the freehold interest in the Site is acquired by ERL the agreements do not come into operation and no “commitment risk” is crystallised.
76. Other risks relate to ensuring that the obligations made in the various legal agreements are honoured. These risks have been extensively discussed with the partners and:
- a. The Development Agreement ensures that the c£1.9m of improvement works planned for the Lawns, the pedestrian & cycle paths and the railings are progressed with new property sales held back, in stages, until each element of work is completed.
 - b. On-going maintenance of the Lawns, pedestrian & cycle paths and the railings is assured via the inclusion of rights that allow the council to step-in and rectify the problem, charging the other party any costs incurred.

Contact Details

Author:

Nick Collins
Head of Property
Tel: 01904 552167

Chief Officer Responsible for the report:

Tracey Carter
Director of Housing Economy and
Regeneration

Report **Date** 26th November
Approved 2021

Specialist Implications Officer(s)

Financial:-

Name Patrick Looker
Title: Finance Manager

Tel No. 0 1904 551633

Legal:-

Name Gerard Allen & Jill Anderson
Title Senior Solicitor & Senior Legal
Officer

Tel No. 01904 552004/552260

Wards Affected: Guildhall and Clifton



For further information please contact the author of the report

Background Papers:

Transfer of Services between Leeds York Partnership FT and Tees, Esk and Wear Valleys NHS FT Reflections, Learning and Assurance Report, 31st March 2016, NHS England.

Bootham Park Hospital, York, Site Development Report, prepared by IBI Group on behalf of City of York Council and York Teaching Hospital NHS Trust, April 2019.

Bootham Park Hospital Railings Condition Survey dated February 2017 and produced by Purcell

Shaping the Future of the Bootham Park Hospital Site, Executive, 21st January 2020.

Annexes

Annex 1a) Plan of the Site showing the Accessway land

Annex 1b) Plan showing the pedestrian & cycle route through the Site

Annex 1c) Plan showing the Lawns area and the Sports Pitches

Annex 1d) Plan showing the Air Quality Monitoring Station and the Helicopter Landing Place

Annex 2 – Details of the Legal Agreements Proposed to be Entered Into

Annex 3 (exempt) - Commercial Terms relating to the entering into Agreements and Leases in order to enable desired uses of the Site

List of Abbreviations and Definitions Used in this Report

1992 Lease = the lease of the Accessway granted on 20th May 1992 for term of 125 years until 20th May 2117

Accessway = the access way to the Combined Site which is shown coloured green on the plan annexed at Annex 1a

Accessway Deed of Easement = a deed of easement granting the District Hospital Trust a right of way over the Accessway in perpetuity

The Agreements = an Agreement for Surrender and Easement; an Agreement for Accessway Lease; and an Agreement for Lawn Leases.

AQMS = Air Quality Monitoring Station

ARCO = Associated Retirement Community Operators

BPH Site = Bootham Park Hospital site

Combined Site = the BPH Site and the District Hospital Trust Site

Deed of Surrender = a deed in which the District Hospital Trust (with the consent of NHSPS/ERL) surrender the 1992 Lease.

District Hospital Trust = York and Scarborough Teaching Hospitals NHS Foundation Trust

District Hospital Trust Site = the land previously occupied by the Bootham Court Nurses' Home

ERL = Enterprise Retirement Living Limited

NHS = National Health Service

NHSPS = NHS Property Services Limited

SDLT = Stamp Duty Land Tax