

Report of Director of Communities and Neighbourhoods

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

**Summary**

1. The purpose of this paper is to appropriate land at Huntington Stadium and the surrounding area for planning purposes for development in line with planning consent granted.
2. The paper outlines the requirement for this appropriation and the legislation used for it as well as the information to assess.
3. The project is now in its final stage of procurement and full commitment is given to its expedient delivery so that construction is completed during the football season 2016/17.

**Recommendations**

4. The Executive is asked to approve the appropriation of the land owned by the Council within the areas edged in red on the plan attached at Appendix 2 to this report for planning purposes as outlined in the report.

**Reason:** To enable the delivery of this important council project.

**Background**

5. 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.

6. The Council has the power to acquire and hold property for various statutory purposes to perform its functions. In order to hold land for a purpose other than the one for which it was acquired the land must be “appropriated” for a different purpose. Appropriation is a statutory process which allows the Council to change the purpose for which it holds property within its ownership from one purpose to another.
7. Section 122 of the Local Government Act 1972 enables the Council to appropriate land which belongs to the Council for any statutory purpose for which it is authorised to acquire land and which is no longer required for the purpose for which it is held immediately before the appropriation. The Council must, therefore, consider whether the land is no longer needed for the purpose for which it is so held if it is to be appropriated for planning purposes.
8. The meaning of the words “no longer required for the purpose for which it was held immediately before the appropriation” was considered by the Courts in the context of the predecessor to section 122. In that instance “not required” was held to mean “not needed in the public interest of the locality”.
9. Appropriation of the land for “planning purposes” (in order to engage the provisions of s237 Town and Country Planning Act 1990 (“the 1990 Act”)) requires the Council to consider the following factors:
  - whether 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;
  - whether the proposed development, re-development or improvement will contribute to the promotion or improvement of the economic, social and/or environmental well-being of the area;
  - whether it is in the public interest that the proposed development should be carried out, having regard to 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;

- as noted above, whether the land is no longer required for the original purpose for which it was acquired
  - whether rights capable of being overridden by s237 of the 1990 Act exist and whether interference with such rights is necessary
10. "Planning purposes" is defined in Section 246(1) of the 1990 Act and acquisition for such purposes includes acquisition under s226 or 227 of the 1990 Act.
  11. Where land is appropriated for planning purposes, it is then held by the Council under the statutory provisions of Part 9 of the 1990 Act. The consequence (by virtue of Section 237 of the 1990 Act, as amended by Schedule 9 of the Planning Act 2008) is that the erection, construction or carrying out of any maintenance or 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.
  12. The purpose of Section 237 of the 1990 Act is to ensure that where land has been appropriated for planning purposes, and provided that work is done in accordance with planning permission, then existing rights, which could prevent the development of that land from proceeding, 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.
  13. Moreover, Section 237 of the 1990 Act provides that compensation is payable for interference with such rights.
  14. The obligation to pay compensation lies with a person who has derived title from the Council. However, if that person fails to meet such obligation then it becomes enforceable against the Council.
  15. 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**

16. As part of the York Community Stadium development land surrounding the existing stadium is required for development in order to provide sufficient room for wide range of new facilities to be provided that include a stadium, community, commercial, charitable, retail, office, restaurant, sports and leisure uses.
17. The procurement process started in September 2012 under EU regulations and is now complete with a final scheme chosen and approved by Cabinet.
18. A final scheme has now been approved and as part of this process it is proposed that the land identified in this report be appropriated for planning purposes under Section 122 of the Local Government Act 1972 and in order that s237 of the 1990 Act is engaged, thereby enabling development to occur notwithstanding that there may be interference with third party rights.
19. Land held by the Council under title numbers NYK406655, NYK195711, NYK317805, NYK158359, NYK80821 and NYK80822 are all affected and included in this request for appropriation, as shown in the plan in Appendix 1.
20. 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 as a leisure site, stadium and parking area (as these are all being re-provided) the land may properly be appropriated for planning purposes under Section 122 of the Local Government Act 1972.
21. Section 237 of the 1990 Act will then apply, to override those rights that exist on the site subject to the persons with the benefit of those rights being able to claim compensation.
22. 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 issues relating to compensation by agreement.

23. The red line for the development site is shown in the plan in Appendix 2.
24. 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**

25. The land to be appropriated has been used as an athletics stadium, rugby ground, gym and swimming/ leisure facility. The stadium element, is predominantly open with one main stand on the east side of the track and a small terrace on the west side of the track. That limited use is no longer needed in the public interest of the locality. It provides a limited range of use with out-dated facilities that no longer meet current needs and the relevant standards (particularly for sport). This was tested through a comprehensive procurement process that saw none of the proposals proposing the retention of any of the facilities. The built fabric is tired. Its current condition is unsustainable and very expensive to maintain and therefore has no long term future. In contrast, the uses to which the land is intended to be put will be multi-purpose and provide a vast range of community and commercial facilities as set out in detail in this report and for which planning permission has been granted. It is therefore no longer desirable for the use of the land to continue in its present form and appropriation for planning purposes is justified and required.
26. The site of Huntington Stadium and Waterworld swimming complex (being the area within Land Registry Title Numbers NYK80821 and NYK80822 as approximately marked on the plan attached at Appendix 1) was originally acquired by the Council's predecessor Ryedale District Council in 1989. Although at the time of preparation of this report it has not proved possible to locate relevant documentation recording the statutory basis upon which Ryedale Council acquired this part of the proposed development site, nonetheless it is clear that this land was undeveloped at that time. It also clear that Ryedale D.C. acquired this land for the purposes of development, namely the construction of the sports stadium and swimming complex which they subsequently procured the erection of. Under the deed by which they acquired this land Ryedale D.C. indicated that it was intended to use the land for sporting and/or recreational purposes. Such intention indicates acquisition consistent with the achievement of

planning purposes and the engagement of the statutory overriding provisions (i.e. sections 122 and 127 of the TCPA 1971, being the predecessor provisions to the 1990 Act). It is therefore possible that such provisions were engaged at that time.

27. The property comprised in Land Registry Title Numbers NYK317805 and NYK195711 (as approximately shown on the plan attached at Appendix 1) was acquired by City of York Council in 2003. In the acquisition deed the Council indicated that it intended to develop and use this area as a park and ride facility.
28. The property comprised in Title Number NYK158359 was acquired by Ryedale D.C. in 1994. The purpose of acquisition by Ryedale D.C. is not known. Since City of York Council became the owner of this land following local government reorganisation in 1996 this land has been developed into part of the existing park and ride site.
29. The Council acquired the land comprised in Title Number NYK406655 in 2013 as vacant/undeveloped land for general potential future use and development.
30. In any event, the Council is presently entitled to exercise its powers to appropriate the land for planning purposes in respect of the proposed development as set out below.
31. The land comprised in Title Numbers NYK80821 and NYK80822 is no longer required solely for sporting and/or recreational purposes as further described in the report. Although the Council does intend that this land will still partly be used for sports and recreational purposes after completion of the proposed development detailed below (since it will be part of the site of the new larger stadium and of the new swimming pool), it will also be used for the other elements of the proposed development scheme, including the 'Community Hub' described below.
32. The new facility will create a community focused leisure and retail destination combine a wide range of different uses. The focal point will be the all seat football and rugby stadium meeting RFL and Football League standards and facilities that meet the modern needs of the game including outdoor 3G surfaces for leisure and training use. The swimming and gym areas will be complimented by indoor and outdoor climbing and adventure ropes facilities and a 4 court sports hall, housing a number of indoor sports such as

basketball, indoor cricket, indoor bowls, volleyball and tennis. These facilities will be funded by the commercial retail, cinema and restaurant uses also incorporated within the scheme, that form part of the planning consent.

33. The entrance to the facilities is created by community hub, with a range of community focused uses clustered around an atrium. This will house community tenants, library service, local charities and a modern outpatient Healthcare facility enabling services to be provided in the community and to promote a healthy environment for rehabilitation and medical care, as well as the delivery of public health agenda. The new swimming facility will be operated year round with its primary use as swimming for health and recreation, including an extensive programme of swimming lessons and club use. It will be a comprehensive development providing integrated and inter-related uses.
34. The site will also include a modern commercial development including restaurants and retail outlets and include a large multi screen cinema facility (essential to the funding of the overall scheme). These will compliment the leisure, sport and health uses of the site, making it a multi use destination with regional significance as opposed to a purely sporting and leisure facility.
35. Those parts of the land edged red on the plan attached at Appendix 2 falling within Title Numbers NYK317805, NYK195711 and NYK158359 are no longer required solely for the purposes of the park and ride facility. This land will be redeveloped to form part of the site of the proposed new, larger stadium and its ancillary car parking area. The remainder of the land within Title Number NYK195711 will be redeveloped to form part of a revised park and ride facility.
36. The scheme will secure the following outputs at the land edged red on the plan attached at Appendix 2 to this report:
  - 8000 all-seat sports stadium to host professional football and rugby league games (originally 6,000 seats).
  - Conference, banqueting and hospitality centre.
  - Training and Development centre operated by the NHS Foundation Trust.

- Community hub forming large central atrium with cafe, meeting area and access to stadium, leisure, commercial facilities and community uses which contains:
  - Healthcare centre (clinical outpatients and office uses) uses.
  - Independent Living Assessment Centre retail & support unit which assists residents with information, assessments, and products to aid independent living.
  - Gateway Explore Library space that will be based in the main atrium area providing a new type of library aimed at accessing new users & groups.
  - 'Charity HQ' including an office & retail outlet.
- A new 'state-of-the-art' leisure and sports centre totalling (this is a new component of the project with a major financial value) containing:
  - 25m swimming pool
  - Teaching pool
  - Leisure fun pool
  - Café and viewing gallery
  - 4 court sports hall with viewing gallery
  - Indoor adventure sports centre
  - Outdoor 3g sports pitches
  - 120 station gym
  - Spin and dance studio
  - Changing facilities
- Extreme Child's Play facility and Outdoor high ropes climbing facility
- Commercial uses that will provide the funding for the new leisure facilities, the 2000 additional seats to the stadium and associated project costs and external works; including:
  - Retail units
  - Restaurants / cafes



- Multi-screen cinema with bar

37. Key quantitative benefits and impacts of the Development Proposals include:

- The commercial, community and leisure proposals have the potential to create up to an additional 165 permanent FTE positions.
- The development proposals have the potential to create 22 temporary FTE positions during the 18 month construction period.
- In isolation from the other extensive uses, evidence suggests that the new stadium could generate from 20% - 40% increase in visitor numbers.
- £500,000 additional income is expected to be created indirectly by the Community Proposals through job creation for York's residents.

38. Key qualitative benefits and impacts of the Development Proposals are set out below:

- **Community focal point:** The new destination will be a positive community focal point for the city which will instil pride and will be an important cultural asset.
- **Increased supporter demand for football and rugby:** The new stadium has the potential to increase supporter demand and attendance numbers. The new facility will accommodate this increase where the existing facilities are unable to do so.
- **Additional opportunities for community engagement:** The new conference facilities and function rooms will provide a wide range of community and health promotional activities to be delivered from the stadium.
- **Development of the visitor economy:** The new destination will provide continued support for the development of the visitor economy in York by providing a new venue for events.
- **Public Health agenda :** The Healthcare clinical facilities provide the opportunity to work collaboratively with key health partners on research programmes, preventative healthcare programmes and professional training programmes. This has the potential to increase the quality of service provision for the community.

- **Collaborative working:** The ILAC facility and the library will be suitably located to take advantage of the footfall from the stadium to maximise their community benefit. In addition, the NHS facilities will use the stadium to promote to visitors preventative healthcare.
  - **High quality children's play facilities:** The Clip and Climb Adventure Centre and the indoor and outdoor areas will provide unique leisure activity for the children and teenagers of York.
  - **Community meeting place:** The café provided within the community hub will be a centralised meeting point for visitors and staff to relax and communicate in a high quality environment. The strategic aims and priorities for York favour development which improves the quality of life for everyone in the City, with a particular importance placed on the creation of inclusive sustainable communities.
39. The Appropriation of the land within the red edging on the plan attached at Appendix 2 will be for planning purposes to facilitate redevelopment of it.
40. Appropriation of this land for planning purposes is required to enable the approved development of this site to take place. The consortia bidding have requested that this appropriation be considered at this time before the contract is completed and in order the development can commence in the knowledge that s237 of the 1990 Act has been enjoyed. The land is to be redeveloped under planning consent 14/02933/FULM and provides a new stadium, leisure complex, retail and cinema outlets, an expanded park and ride area and associated parking for the development.
41. The alternative option is to not to consider making such appropriation at this time. This option is not recommended because:-
- a) the bidders have indicated they will not complete the contract (if appropriation does not take place) 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.
  - d) This would have a direct detrimental impact on city's professional Football and Rugby League clubs.
42. In addition to the above matters appertaining to appropriation for planning purposes, 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)
43. 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.
44. From research carried out it is believed that only a very small number of persons/organisations may own neighbouring land with the benefit of rights over the land edged red on the plan attached at Appendix 2 which could in practice be exercised over the proposed development site. The covenants previously given that:
- (a) the land comprised in Title Numbers NYK80821 and NYK80822 would only be used for sporting and/or recreational purposes
  - (b) the majority of the land comprised in Title Numbers NYK317805 and NYK195711 would only be used for a park and ride facility
45. These were previously released by the persons with the benefit of those covenants so they no longer apply to the land. Some nearby land may theoretically have the benefit of various rights over certain parts of the land edged red on the plan attached at Appendix 2 (such as, for example, rights to connect into drains and sewers) but most, if not all, of such 'benefited land' is now

separated from the appropriation site by other land that does not appear to have the benefit of such rights so those rights may no longer practically be exercisable and the 'benefited land' does not appear to need any rights over the appropriation site. However to guard against the risk that third party rights might still currently affect the appropriation site that could hinder or adversely affect the implementing of this important community benefit scheme, it is considered necessary and justifiable for an appropriation to planning purposes. Any interference with any such third-party rights arising from implementation and operation of the development scheme and arising from the consequences of the appropriation to planning purposes is assessed as being necessary and justifiable in light of the wider significant public benefits that will derive from the scheme and the fact that the parties with the benefit of hindered rights may be entitled to compensation as explained in the 'Human Rights' section of this report below.

46. 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.

### **Human Rights**

47. The European Convention on Human Rights ("the Convention") was incorporated into domestic law in England and Wales by the Human Rights Act 1998 ("the 1998 Act"). The 1998 Act prevents public authorities from acting in a way which is incompatible with rights protected by the 1998 Act.
48. Of particular relevance to the acquisition of interests in land or overriding of interests/rights in land are Article 8 of the Convention regarding respect for privacy and family life and Article 1 of the First Protocol which concerns the protection of property.
49. Such rights are qualified rights and may therefore be overridden where it is considered that the interference with these rights are proportionate and that the interference is necessary in the interests of, amongst other things, national economic well being.

50. The European Court of Human Rights has recognised in the context of Article 1 of the First Protocol that “regard must be had to the fair balance that has to be struck between the competing interests of the individual and of the community as a whole”, and both public and private interests have been taken into account in the exercise of the authority’s powers and duties as a local authority.
51. It is acknowledged that the appropriation of land for planning purposes may result in interference with property rights. However, compensation will be payable in accordance with statute.
52. The assessment undertaken by the Council has taken into account the social, economic and environmental well being of the locality. Moreover, in considering this appropriation, the Council has carefully considered the balance to be struck between individual rights and the wider public interest. In this instance it is considered that the appropriation is required in the public interest and is consistent with the European Convention of Human Rights and the 1998 Act in that the public purpose of securing the site for the redevelopment described herein and concomitant economic, social and environmental benefits are of sufficient weight to override the interference with such human rights as the appropriation may involve; and that appropriation is necessary to achieve that purpose.

### **Risk Management**

53. 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.
54. A risk remains that compensation claims may arise due to the extinguishment of rights on the site.

### **Financial comments**

55. There are no direct financial implications arising from the decision to appropriate the land as referred in the report. There is contingency in the budget for any issues relating to unregistered interests. Defective title insurance has also already been acquired by the Authority from Aviva to protect against any claims that may arise. Any costs arising from these claims will be met within the overall scheme budget.

## **Legal**

56. 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.
57. 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 itand
  - 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).
58. 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.
59. 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.

## **Property**

60. The land comprising the proposed stadium complex/leisure facilities site was originally acquired by Ryedale District Council for leisure purposes.

61. It is considered that appropriation of the land to planning purposes will facilitate the carrying out of development, re-development or improvement works on the land which will contribute to the promotion or improvement of the economic, environmental or social well-being of its area.

### **Contact details**

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### **Annexes**

Appendix 1- Title Plan

Appendix 2 - Red Line Plan for the Huntington Stadium Site

### **Glossary of Terms**

GLL	Greenwich Leisure Limited
NSLC	New Stadium Leisure Complex
CYC	City of York Council
OJEU	Ordinary Journal of the European Union
DBOM	Design, Build, Operate, Maintain
CD	Competitive Dialogue
UoY	University of York
YSJ	York St John
RFL	Rugby Football League
YCFC	York City Football Club

MDA	Match Day Agreement
S106	Section 106
FSIF	Football Stadia Improvement Fund
YCK	York City Knights
EU	European Union
NNDR	National Non Domestic Rates
3G	Third Generation Astroturf pitch
P & R	Park and Ride