

Report of Head of Land and Property / Chief Officer Parks and Countryside

Report to Director of City Development / Director of Communities and Environment

Date: 23 January 2018

Subject: Appropriation of land within the East Leeds Orbital Road area for Planning purposes

Are specific electoral wards affected?	<input checked="" type="checkbox"/> Yes <input type="checkbox"/> No
If yes, name(s) of ward(s): Crossgates & Whinmoor, Harewood, Killingbeck & Seacroft, Moortown, Roundhay	
Are there implications for equality and diversity and cohesion and integration?	<input type="checkbox"/> Yes <input checked="" type="checkbox"/> No
Is the decision eligible for call-in?	<input type="checkbox"/> Yes <input checked="" type="checkbox"/> No
Does the report contain confidential or exempt information? If relevant, access to information procedure rule number: Appendix number:	<input type="checkbox"/> Yes <input checked="" type="checkbox"/> No

Summary of main issues

1. This report sets out the requirement for land in the Council's ownership to be declared surplus to current operational requirements and for its subsequent appropriation to Planning purposes, with immediate effect, so that it may be utilised for the provision of essential new highway infrastructure namely the construction, operation and future maintenance of the East Leeds Orbital Road (ELOR) project.
2. It is proposed to declare as surplus council owned land currently vested with Parks and Countryside in the Communities and Environment Directorate as shown on the plan at Appendix 1. Approval is also sought to declare that the land shown coloured pink on the plan at Appendix 2 is no longer required for its present purposes and for the Council to appropriate the said land to Planning purposes pursuant to the Local Government Act 1972. Public notice must be given before the appropriation can take effect and the Council would need to give consideration to any objections lodged. The step has been taken by the Council and no objections to the proposed appropriation have been made.
3. Declaring this land as surplus to current operational requirements and appropriating it to Planning use for the purposes of the ELOR, with immediate effect, will complement the action the Council is taking to secure the necessary land and interests required for the scheme (both by agreement and through the use of

compulsory purchase powers where necessary) to achieve land assembly for this important project. The land coloured blue on the plan at Appendix 2 is existing Highway and is not subject to appropriation. The land coloured green on the plan at Appendix 2 is currently in private ownership which the council intends to acquire by agreement or CPO for Highway use as part of the ELOR Project. It should be noted that the privately owned land to be acquired includes Council owned footpaths, bridleways and other rights of way within the extent shown on the plan at Appendix 2, but due to the scale of this plan it is difficult to show these small Council owned land areas separately and clearly.

4. Section 122 of the Local Government Act 1972 ('Appropriation of land by principal councils') gives the Council power to appropriate land it holds for any purpose to another purpose. It is proposed that the land held by the Council for several statutory purposes, falling within the edged red land on Appendix 2, is appropriated for Planning purposes for use in connection with the construction, operation and future maintenance of the ELOR. Land acquired by the Council for the purposes of the ELOR, either by agreement or pursuant to the proposed Compulsory Purchase Order to be made for the Scheme, will be dedicated by the Council for highway use following acquisition.
5. Also, to complement the land assembly exercise, authority is sought for the Council to make use of the powers available under section 203 of the Housing and Planning Act 2016, ("the 2016 Act") to override easements, rights and other adverse matters affecting the edged red land shown on Appendix 1, which may otherwise prevent or inhibit the construction and maintenance of the ELOR, subject to the payment of compensation under section 204 of the 2016 Act.
6. Should an affected party come forward with a claim for compensation under section 204 of the 2016 Act, then this would need to be met by the Council. If compensation was not agreed then the party concerned may seek a determination of compensation from the Upper Tribunal (Lands Chamber). Any compensation payable is assessed on the same basis as compensation under sections 7 and 10 of the Compulsory Purchase Act 1965 (i.e. as an injurious affection claim). Each claim would be dealt with on its own merits and on a case by case basis. In respect of any claim where a right has been overridden, there may be scope to mitigate a claim if an alternative right can be granted or other remedial measures can be taken which are not inconsistent with the ELOR.
7. In summary, appropriation of the land currently held by the Council for other purposes together with the ability to override easements, rights and other adverse matters to complement the land assembly exercise being undertaken by the Council, will facilitate the construction and maintenance of the ELOR without delay to the programme.

Recommendations

1. The Director of Communities and Environment is requested to:
 - 1.1 Declare the land vested with Parks and Countryside shown coloured pink on the attached plan at Appendix 1 as surplus to the Directorate's requirements with immediate effect.
 - 1.2 Agree with the Director of City Development practical arrangements for the transfer of future maintenance responsibilities for the land concerned.

2. The Director of City Development is requested to:
 - 2.1 In accordance with Section 122 of the Local Government Act 1972, to declare that the land shown coloured pink on the plan at Appendix 2 is no longer required for its present purposes, and to appropriate the said land for Planning purposes, with immediate effect, for the purposes of the ELOR.
 - 2.2 Agree with the Director of Communities and Environment practical arrangements for the transfer of future maintenance responsibilities for the land to be appropriated for planning purposes in connection with the ELOR.
 - 2.3 Authorise the Council to utilise the powers contained in section 203 of the Housing and Planning Act 2016 ("the 2016 Act") to override easements, rights and other adverse matters burdening the land required to facilitate the construction and maintenance of the ELOR as shown edged red on Appendix 2 to this report, subject to the payment of compensation under section 204 of the 2016 Act.

1. Purpose of this report

- 1.1 The purpose of this report is to seek approval to declare council owned land currently vested with Parks and Countryside in the Communities and Environment Directorate shown coloured pink on the plan at Appendix 1 as surplus to requirements, with immediate effect.. Approval is also sought to declare that the council owned land shown coloured pink on the plan at Appendix 2 is no longer required for its present purposes and approve appropriation of the said land for Planning purposes, also effective immediately, in order to facilitate the construction, operation and maintenance of the ELOR. Further, this report seeks authority for the Council to rely on powers under section 203 of the Housing and Planning Act 2016 ("the 2016 Act") to override easements, rights and other adverse matters burdening the land shown coloured pink on the plan at Appendix 1.

2. Background information

- 2.1 The East Leeds Orbital Road (ELOR) is a major infrastructure scheme that will deliver new strategic highway capacity for the east of the city and enable the development of a significant area of new housing in the East Leeds Extension to come forward. The East Leeds Extension (ELE) was allocated for residential development in the 2006 Unitary Development Plan Review (UDP) and is the largest single area of allocated housing land in the city, estimated to accommodate around 5,000 new homes by the time it is fully built out. This will form a significant part of the overall requirement for the overall target of new homes across Leeds by 2028 as set out in the Core Strategy.
- 2.2 The ELE is a strategic growth point, which is of regional if not national importance. It is recognised by the Local Enterprise Partnership (LEP) and West Yorkshire Combined Authority (WYCA) as a Strategic Priority Area in the Leeds City Region Strategic Economic Plan and by central government as a major development and investment opportunity that will help drive forward the 'Northern Powerhouse' initiative.
- 2.3 ELOR will underpin and unlock the full development of the ELE, providing access to development sites and strategic highways capacity that will relieve pressure on the existing A6120 Outer Ring Road and local highways network. ELOR is a complex and significant infrastructure project, which as a 7km dual carriageway incorporating significant new pedestrian, cycling and equestrian facilities in a landscaped setting; it will be the largest single highway scheme constructed by the city council since the 1970s.
- 2.4 The Council has committed to playing a leading role in the co-ordination and delivery of this transport infrastructure that will be necessary to realise this residential and economic growth, in a complex context of multiple land ownership, commercial interests and public funding.
- 2.5 Construction of ELOR between the A6120 at Red Hall and Manston Lane will include new segregated pedestrian and cycling facilities on the city side of the road, a new ped-cycle leisure route on the country side of the road, dedicated pedestrian and cycle bridges, links into public rights of way and a 'green' underpass to a country park, all of which will become linked into the new housing developments as these come forward as part of the ELE.
- 2.6 The land and interests held by the Council within the ELOR scheme boundary are shown within the extent of the red-shaded land on Appendix 1.

3. Main Issues

- 3.1 At its meetings in February and June 2017, Executive Board agreed a land assembly strategy to enable the delivery of the ELOR scheme and authorised the making of a compulsory purchase order to supplement the efforts the Council is making to acquire third party land by agreement for the scheme. To support this work it is necessary for the Council to take the appropriate steps to formally appropriate its own land, currently used for other purposes within the scheme area, for the purposes of the ELOR with immediate effect. This requires the identified land to be declared surplus to operational requirements and to appropriate it for Planning purposes for use in connection with the construction, operation and maintenance of the ELOR.

Declaration of Surplus Land

- 3.2 Council owned land across the ELOR area is in two locations. At the north of the scheme land at Red Hall has been in two main long-standing uses; on the western part of this site a former Parks and Countryside depot and plant nursery has been relocated to a new facility at Whinmoor Grange, which became operational in October 2017 enabling the Red Hall site to be cleared. On the eastern part of the site, an area of former playing fields, currently in informal recreational use, also requires to be appropriated for planning purposes in connection with the ELOR scheme, with immediate effect. The whole of the Red Hall site has been allocated for development in the UDP, with the publication draft Site Allocations Plan proposing the future land use as wholly residential, subject to delivery of the ELOR scheme and provision of new areas of on-site public green space.
- 3.3 Following the closure of the former depot and plant nursery, it is now necessary to declare those parts of the nursery site required for ELOR as surplus to those former operational uses and also to formally declare as surplus to current use those parts of the former playing fields required for ELOR.
- 3.4 Activity is currently underway to vacate the nursery site of remaining materials and to prepare it for demolition and clearance. The cleared land would remain as such until the ELOR scheme is implemented, to be maintained and kept secure through site management arrangements to be put in place by Civic Enterprise Leeds as part of their Void Management.
- 3.5 The former playing fields are now unused and have not been used formally since 2006, as a result of ongoing drainage issues that were proving too costly to address in a sustainable way. The former playing fields remain in a water-logged state for a large part of the year.
- 3.6 The declaration as surplus to operational requirements of the land referred to in this report for the purposes of delivering the ELOR scheme is consistent with the Council's published planning brief for Red Hall, which sets out the route of ELOR around the site and the land to be included as part of the highway scheme. The brief also states that future redevelopment of the site will include the delivery of new green space, which will be outside of the ELOR scheme red line. The land to be declared surplus does not impact on this wider approach.
- 3.7 To the south of the scheme, Council land is already vested with City Development in two main parcels, both in agricultural use and currently let to third parties for farming purposes as part of arrangements covering a wider area of Council land. The Council has put in place provisions to enable these agricultural tenancies to be

terminated at such time the ELOR scheme is to be implemented. It is not therefore necessary to declare these areas of land as surplus to requirements.

- 3.8 The land coloured blue on the plan at Appendix 2 is existing Highway and is therefore not subject to appropriation for Planning purposes.

Appropriation

- 3.9 To further enable site assembly for ELOR it is necessary to appropriate land held by the Council currently for other statutory purposes, to Planning purposes, together with that already held by the Director of City Development for other uses, with immediate effect, for use in connection with the construction, operation and maintenance of the ELOR to complement the efforts the Council is making to purchase, by agreement and compulsorily if necessary, the other land required to facilitate the ELOR.. It is also necessary for the Council to authorise the use of powers contained in section 203 of the Housing and Planning Act 2016 (“the 2016 Act”) to override, easements rights and other adverse matters burdening the land, subject to the payment of compensation under section 204 of the 2016 Act.
- 3.10 Within the edged red land, there are a number of easements, rights and other adverse matters burdening it that could prevent or inhibit the construction of ELOR and/or its operation and/or maintenance. Examples of such matters include:
- 3.10.1 rights of way and restrictive covenants;
 - 3.10.2 rights for the passage and running of services that cross the route of the ELOR;
 - 3.10.3 other adverse matters burdening the land.
- 3.11 These adverse matters can be overcome by the Council utilising powers contained in section 203 of the 2016 Act, which have the effect of overriding them subject to the payment of compensation.
- 3.12 Section 203 of the 2016 Act enables the carrying out building or maintenance work and the use of land notwithstanding that it involves interference with a relevant right or interest or breaching a restriction as to the user of land arising by virtue of a contract. A relevant right or interest extends to any easement, privilege, right or advantage annexed to land or adversely affecting other land (including any natural right of support).
- 3.13 These provisions apply where:-
- 3.13.1 there is planning consent for the building or maintenance work;
 - 3.13.2 the work is carried out on land that has become vested in or acquired by an authority or appropriated;
 - 3.13.3 the authority could acquire the land compulsorily for the purposes for which the land was vested, acquired or appropriated; and
 - 3.13.4 the building or maintenance work is for purposes related to the purposes for which the land was vested, acquired or appropriated.
- 3.14 These powers are therefore applicable to the Council and may be relied upon to override adverse matters burdening the land required for the ELOR. However, as noted above, there is an obligation to pay compensation under section 204 of the 2016 Act as an injurious affection claim under sections 7 and 10 of the Compulsory Purchase Act 1965. The obligation to pay compensation will fall to the Council. If there is scope to put replacement rights in place that do not conflict with the ELOR

then claims could potentially be mitigated. Should there be no agreement between the Council and the party concerned with regard to the level of compensation to be paid, compensation disputes can be settled by the Upper Tribunal (Lands Chamber).

- 3.15 As with the approach to declaring land surplus for the ELOR scheme, the appropriation of the land to planning purposes as set out in this report is consistent with the Council's agreed approach to development of the Red Hall site. The appropriation is only in respect of the land for the ELOR scheme and the remainder of the Red Hall site will be brought forward as a residential development including the laying out of new public green space, following principles established in the Red Hall planning brief.

4. Corporate considerations

4.1 Consultation and engagement

- 4.1.1 The Leader and the Executive Member for Regeneration, Transport and Planning have both been briefed and are supportive of the ELOR scheme, whilst Ward Members for Crossgates and Whinmoor and Harewood, the two wards the ELE covers, have received regular updates on the East Leeds Extension and ELOR.
- 4.1.2 Comprehensive community consultation has been undertaken for ELOR and the wider East Leeds Extension regeneration proposals. Consultation reports documenting the comments received from members of the public and stakeholders are available on the Council's ELE webpages.
- 4.1.3 The proposed appropriation of the land was advertised in the Yorkshire Evening Post on 9th December 2017 and 16th December 2017 with objections to be submitted to the Council by no later than 23rd December 2017. No objections have been received.

4.2 Equality and diversity / cohesion and integration

- 4.2.1 In considering the use of appropriation it is important that human rights and equalities impacts are fully taken into account in any delegated decision. It is considered that the use of appropriation in this case is necessary and proportionate to facilitate the delivery of the ELOR project and there is a compelling case in the public interest justifying interference with the third party rights of those affected by the scheme.
- 4.2.2 An EDCI screening for the proposals in this report is provided at Appendix 3 and this indicates that the issues set out in this report are unlikely to have equality, diversity/cohesion and integration impacts and that there is no need for a full assessment at this stage. However this will be kept under review throughout the promotion and implementation of ELOR and the ELE, to ensure that any EDCI impacts arising can be measured and mitigated against.

4.3 Council policies and best council plan

- 4.3.1 The East Leeds Extension will play a major role in delivering the new housing required to meet the Core Strategy requirements by 2028 and will assist in the delivery of the Best Council Plan ambition for a Strong Economy and Compassionate City and the outcomes it seeks to achieve regarding delivery of

good quality, affordable homes, well cared for places and a well-planned city which is easy to move around. Delivery of ELOR and its enabling role in development of the ELE will provide much needed new homes, meeting housing needs as the city grows, boost the local economy, deliver new social and physical infrastructure and improve travel and access to new employment opportunities.

- 4.3.2 The sustainable transport infrastructure being provided as an integral part of the ELOR project supports the wider strategy for cycling set in the Leeds Cycling Starts Here Strategy and sits within the emerging Leeds transport strategy and the West Yorkshire Transport Strategy.

4.4 Resources and value for money

- 4.4.1 The land vested with Parks and Countryside within the ELOR scheme that is proposed to be declared surplus to operational requirements will have its existing maintenance arrangements retained by Parks and Countryside until the ELOR scheme is implemented.
- 4.4.2 There are no financial costs associated with the appropriation of the land except internal staff costs and the payment of compensation. Any potential compensation costs would be paid for from the overall scheme budget for the ELOR which the Council has already approved.
- 4.4.3 Following appropriation future maintenance responsibility for the council owned land in question will transfer to the Highways Authority once the ELOR scheme has been implemented.

4.5 Legal implications, access to information, and call-in

- 4.5.1 Under Part 3 Section 3E(f) Paragraph 12(a) of the Council's Constitution (Officer Delegation Scheme (Executive Functions) dated 25th May 2017, the Director of Communities and Environment has authority to discharge any function of Executive Board in relation to Parks and Countryside (including 12a) management of greenspaces)
- 4.5.2 Under Part 3 Section 3E(g) Paragraph 1(c) of the Council's Constitution (Officer Delegation Scheme (Executive Functions) dated 25th May 2017, the Director of City Development has authority to discharge any function of Executive Board in relation to Asset Management (including 1c) valuations and appropriations).
- 4.5.3 The provisions of Section 122 Local Government Act 1972, as amended, enable council land to be appropriated for another purpose.
- 4.5.4 The proposal constitutes a Significant Operational decision and is therefore not subject to call in.

4.6 Risk management

- 4.6.1 It is proposed following the appropriation of the land subject to this report that the practical arrangements needing to be made to transfer future maintenance responsibility for the land shown coloured [refer to relevant colour on the plan] are discussed and agreed between the Director of Communities and Environment and the Director of City Development
- 4.6.2 The risk attached to the proposed appropriation is likely to be low and limited to payments of compensation to any interested parties who are adversely affected by

the loss of the rights. The amount of compensation would be determined by reference to the reduction in value of the land having the benefit of the rights.

- 4.6.3 The amount of such compensation cannot be quantified at this stage. Subject to individual valuations and circumstances, where rights are lost or interfered with, there may be scope for alternative arrangements to be put in place in mitigation, thus reducing the compensation burden for the Council.

5. Conclusions

- 5.1 To enable the ELOR Project to progress it is necessary for the Council to declare the land vested with Parks and Countryside in the Communities and Environment Directorate as surplus to operational requirements and appropriate the land coloured pink on the plan attached at Appendix 2 for Planning purposes. The land coloured blue on the plan at Appendix 2 is existing Highway and is not subject to appropriation. The land coloured green on the plan at Appendix 2 is currently in private ownership which the council intends to acquire for Planning purposes by agreement or CPO as part of the ELOR Project.
- 5.2 Utilising the powers in section 203 of the 2016 Act will enable adverse easements, rights and other matters burdening the land to be over-ridden, subject to the payment of compensation for injurious affection. Relying on these powers will be beneficial for the Council and ensure that construction and maintenance of the ELOR is not prevented or inhibited.
- 5.3 It is important to progress the appropriation now before commencement of the construction of the ELOR project thereby removing the risk of a potential delay to the programme.

6. Recommendations

- 6.1 The Director of Communities and Environment is requested to:
- 6.1.1 Declare the land vested with Parks and Countryside shown coloured pink on the attached plan at Appendix 1 as surplus to the Directorate's requirements with immediate effect.
- 6.1.2 Agree with the Director of City Development practical arrangements for the transfer of future maintenance responsibilities for the land concerned.
- 6.2 The Director of City Development is requested to:
- 6.2.1 In accordance with Section 122 of the Local Government Act 1972, to declare that the land shown coloured pink on the plan at Appendix 2 is no longer required for its present purposes, and to appropriate the said land for Planning purposes , with immediate effect, for the purposes of the ELOR.
- 6.2.2 Agree with the Director of Communities and Environment practical arrangements for the transfer of future maintenance responsibilities for the land to be appropriated for planning purposes in connection with the ELOR.
- 6.2.3 Authorise the Council to utilise the powers contained in section 203 of the Housing and Planning Act 2016 ("the 2016 Act") to override easements, rights and other adverse matters burdening the land required to facilitate the construction and maintenance of the ELOR as shown edged red on Appendix 2 to this report, subject to the payment of compensation under section 204 of the 2016 Act.

7. Background documents¹

7.1 None.

¹ The background documents listed in this section are available to download from the Council's website, unless they contain confidential or exempt information. The list of background documents does not include published works.