

<b>Policy &amp; Resource Committee Meeting</b>	
<b>Meeting Date</b>	Wednesday 17 <sup>th</sup> December 2025
<b>Report Title</b>	Cockleshell Walk, St Michael's Road, Sittingbourne, ME10 1AU: Appropriation of Land for Planning Purposes
<b>EMT Lead</b>	Emma Wiggins, Director of Regeneration and Neighbourhoods
<b>Head of Service</b>	Charlotte Hudson, Head of Housing and Communities
<b>Lead Officer</b>	Charlotte Hudson, Head of Housing and Communities
<b>Classification</b>	<b>Open / Restricted Appendix II</b>
<b>Recommendations</b>	<ol style="list-style-type: none"> <li>1. <b>Confirm</b> that the Land (as defined in paragraph 1.1 below) is no longer required for those purposes for which it is held (surface level car park);</li> <li>2. <b>Approve</b> the appropriation of the Land for planning purposes to facilitate its development pursuant to section 122(1) of the Local Government Act 1972;</li> <li>3. <b>Approve</b> the Council relying on powers under section 203 of the Housing and Planning Act 2016 to override any third party rights interfered with by development of the Land;</li> <li>4. <b>Delegate</b> authority to the Director of Regeneration and Neighbourhoods to take all necessary steps to affect the appropriation of the Land for planning purposes in accordance with section 122(1) of the Local Government Act 1972;</li> <li>5. <b>Delegate</b> to the Director of Regeneration and Neighbourhoods the authority to appoint external consultants to assess and agree any compensation and claims arising from the development of the Land;</li> <li>6. <b>Delegate</b> authority to the Director of Regeneration and Neighbourhoods and the Director of Resources, to agree the terms of and enter into any documentation required to settle any property and compensation matters necessary to progress the development of the Land.</li> </ol>

## 1. Purpose of Report and Executive Summary

- 1.1 This report seeks authorisation for Officers to proceed with the appropriation of land for planning purposes under section 122 of the Local Government Act 1972 to facilitate the development of the land at Cockleshell Walk, St Michael's Road,

Sittingbourne, ME10 1AU ("the **Land**") the boundaries of which are shown [in red on the plan at Appendix 1].

1.2 The report also seeks:

- a. authorisation for Officers to proceed with overriding the third party rights which are interfered with by the development of the Land under section 203 of the Housing and Planning Act 2016.
- b. approval of this report's recommendations to help facilitate the development comprising of the erection of three buildings to provide 51 residential dwellings (Class C3) and hard and soft landscaping, cycle and car parking and associated works (the "**Development**").

1.3 The decisions sought in this report are to enable the delivery of 51 residential dwellings (Class C3) and hard and soft landscaping, cycle and car parking and associated works (the Development) on Council-owned land currently occupied by a surface level car park.

1.4 The Development will secure a number of public benefits, including:

- a. Increasing the supply of affordable housing, for which there is an acute need;
- b. Providing local economic investment, including job and training opportunities;
- c. Delivering a 117.81% biodiversity net gain (exceeding the 10% baseline requirement);
- d. Providing cycle parking and two separate secure stores comprising 51 cycle parking spaces in line with Swale Borough Council parking standards;
- e. Providing 28 car parking spaces all with EV charging points;
- f. Improving housing stock; and
- g. Improving public realm.

1.5 It is therefore considered that the Development would contribute towards the promotion and improvement of the economic, social and environmental well-being of the borough.

1.6 An appropriation of the Land is required to mitigate against the proposed Development being frustrated or delayed by legal injunction and to ensure the delivery of the scheme.

## **2. Background**

2.1 The Land is located within Sittingbourne Town Centre and extends to 0.36 ha. It currently comprises almost entirely of an in-use surface level car park with narrow land strips to the north-west and south forming pedestrian routes from the car park towards a neighbouring housing area. The Land is not located in a conservation area and does not comprise of any statutory or locally listed buildings. The Council is the freehold owner of the Land.

- 2.2 The Land previously formed part of the Spirit of Sittingbourne scheme which was a scheme to regenerate the town centre. As part of this scheme, a number of car parks within the town centre (including the Land) were identified as being suitable for development. The scheme sought consent for the construction of a multi storey car park to enable the closure and redevelopment of these identified car parks. Planning permission for that scheme was obtained, and appropriation of the Land was authorised on 11 October 2012 by the Director of Regeneration. Whilst there has been a previous appropriation of the Land in question, the Land continued to be used as a car park and the Land was not developed pursuant to the Spirit of Sittingbourne Scheme. Consequently, a new appropriation of the Land is being sought pursuant to this report notwithstanding that the Land has been previously appropriated.
- 2.3 Please also note the following relevant planning history:
- a. Planning permission (reference 14/505440/FULL) granted on 24 May 2017 in respect of the development of the Land which authorised the “Proposed mixed use development - on six parcels of land - of 212 residential apartments (use class C3), 3158 sq m of retail space (use class A1), A 308 space multi storey car park, 1713 sq.m cinema (use class D2), 2320 sq.m ground floor restaurant units (use class A3), first floor D2 use and the re-alignment of St Michael's road with amendments to the road network and the creation of a new public square in Sittingbourne Town Centre, in front of the railway station (the **2017 Permission**);
  - b. Planning permission dated 18 March 2025 allocated reference 23/503228/FULL for the erection of three buildings to provide 51 no. residential dwellings (Class C3) and hard and soft landscaping, cycle and car parking and associated works (the **Planning Permission**).
- 2.4 The 2017 Permission relates to land beyond the Land. While the 2017 Permission is extant and the commercial elements of the 2017 Permission have been built out, development on the Land has not yet been brought forward. The Land therefore remains in-use as a surface level car park. The intention is for the Land to instead be developed pursuant to the Planning Permission, which facilitates the Development.
- 2.5 The Council has already chosen its development partner following a competitive tender process to bring forward the Development pursuant to the Planning Permission and are in negotiations with the development partner to finalise the underlying contracts.
- 2.6 The current proposal is broadly consistent with the previous scheme, and the arguments advanced and accepted in support of the earlier appropriation remain applicable. (This is set out in Background Paper Cabinet report 6 June 2012 and Director of Regeneration Delegation report 11 October 2012).
- 2.7 Further detail of the scheme and its benefits are explained below.
- 3. Proposals**
- 3.1 The Land is held and used for car parking purposes.

- 3.2 Section 122 of the Local Government Act 1972 provides a power to the Council to appropriate land from one purpose to another. This purpose can be any purpose for which the Council is authorised to acquire land by agreement. The Council must consider whether the land is no longer needed in the public interest of the locality for the purpose for which it is held. The Council should not make the appropriation unless it considers that interference with rights are necessary.
- 3.3 Without the exercise of the Council's appropriation powers, parties who are affected by the diminution of their rights to light or any other rights have the potential ability to bring injunctive proceedings to prevent the development. This could potentially halt the project and could result in a delay to the delivery of the development.
- 3.4 Once the Land is appropriated for planning purposes, the Council will be able to exercise powers under section 203 of the Housing and Planning Act 2016 to interfere with existing rights annexed to adjoining land that may adversely affect the Land. Section 203 does not extinguish adjoining owners' rights but allows a specific development to proceed in accordance with the grant of planning permission. The statutory objective of section 203 is that, provided that the development is undertaken in accordance with a planning permission and subject to other criteria being satisfied, a local authority should be permitted to develop its land in the manner in which it, acting bona fide, considers will serve the public interest and to that end it is recognised that a local authority should be permitted to interfere with third part rights.
- 3.5 There are four requirements that must be fulfilled in order for section 203 to be exercised are:
- a. the site must be acquired or appropriated by a local authority for planning purposes;
  - b. there is planning consent for the building or maintenance work or use;
  - c. a local authority could (if not already the owner) acquire the site compulsorily for the purposes of carrying out works (including construction and maintenance works), or for the use of the land permitted by the relevant planning consent; and
  - d. the work or use in question relates to the purposes for which the land was appropriated.
- 3.6 The effect of section 203 is to enable the development to proceed and authorises the interference of those rights. Third parties whose rights are infringed are entitled to compensation for any interference with a relevant right or interest or breach of a restriction that is authorised by section 203. This is addressed in section 204.
- 3.7 Section 204(2) confirms that compensation should be calculated on the same basis as compensation payable under section 7 and 10 of the Compulsory Purchase Act 1965. The amount of compensation payable is the diminution in the value of the affected interest. Any dispute about compensation payable may be referred or determined by the Upper Tribunal.

- 3.8 The Council has commissioned a Rights of Light Analysis Report ("the RoL Report") (Exempt Appendix [2]) to assess the potential effects of the Development on the rights of light of the surrounding buildings. The RoL Report does reveal some properties neighbouring the Land which may have rights of light over the Land which could be infringed by the proposed Development. The risk of injunction means that the Council should consider the use of its statutory powers to ensure that the development proceeds.
- 3.9 As a result of the above, authority is sought to authorise the Director of Regeneration and Neighbourhoods to appropriate for planning purposes under section 122 of the Local Government Act 1972 and authority to settle any compensation claims arising from the appropriation.

### **3.10 WHY THE LAND IS NO LONGER NEEDED TO ITS CURRENT PURPOSES**

- 3.10.1 To appropriate the Land, it must be considered to be "no longer required for the purpose for which it is held immediately before the appropriation".
- 3.10.2 The existing surface level car park represents an ineffective use of the Land and its current form makes a negative contribution to the character of the surrounding area.
- 3.10.3 The Council acknowledges the poor quality of the existing Land in its Local Plan identifying the surface level car park and exposed backs of properties as features that "undermine the setting of Cockleshell Walk...and produce an unattractive gateway to the town centre."
- 3.10.4 The proposal provides an opportunity to develop the Land by optimising its use for residential development.
- 3.10.5 That the car parking facilities at Cockleshell Walk would be developed to provide housing is set out in the Local Plan which notes that "Once the new town centre car parking facilities have been secured, the redevelopment of car parks here will be able to provide 150 dwellings". The new car parking facilities have now been delivered via the construction of the 308-space multi-storey car park (planning reference 14/505440/FULL). This new car park has addressed local parking needs such that other car parks in the area, such as the Land, which had been identified for redevelopment are no longer required for their original purpose.

### **3.11 THE DEVELOPMENT AND ITS PUBLIC BENEFITS**

- 3.11.1 **The Development**
- 3.11.2 The Land is within an area identified by the Local Plan as requiring regeneration. In particular the Local Plan notes "The western end of the High Street is an unremarkable collection of uses, surface car parking and exposed backs of properties which undermine the setting of Cockleshell Walk and Trinity Church and produce an unattractive gateway to the town centre".

- 3.11.3 The Development comprises the erection of three buildings to provide 51 residential dwellings (Class C3) and hard and soft landscaping, cycle and car parking and associated works.
- 3.11.4 The Development will provide a significant contribution to the Borough's annualised housing delivery target of 776 units across the Borough. The Development will also provide for 10% of the Dwellings to be affordable housing..
- 3.11.5 The Development has been designed following extensive site analysis, taking into account the character and rich built heritage of the surrounding area as strategic ambitions for Sittingbourne set out in the Local Plan.
- 3.11.6 The new homes are designed to enhance the quality of housing, the layout and relationship of the Land to its context. This has been achieved through the introduction of a setback elements on the top floor levels which enable the proposals to sit more comfortably with the existing prevailing building heights in this part of the town centre. The roofline has been improved to form a more congruent streetscape along Cockleshell Walk.
- 3.11.7 The design has also been informed by informal engagement with Council planning and urban design officers and public engagement via a local letter-drop campaign inviting comments.
- 3.11.8 The material palette and architectural language and detailing of the proposals have been chosen to reflect the distinctive character of Sittingbourne. The brick type and pattern is informed by the area's brick manufacturing heritage, and have used the architectural features of surrounding notable buildings as inspiration for the detailing of the proposals. Features such as the recessed window surrounds, herringbone patterned panels and arches have been identified as architectural motifs typical of the surrounding area and have been introduced to the proposals ensure that the proposals are in keeping with the character of their surroundings.
- 3.11.9 Site landscaping has been significantly increased in quantum and quality and proposed landscape design has been carefully selected to enhance the quality of St. Michael's Road. The proposed planting will provide year-round interest as well as improving the ecology and biodiversity value of the Land.
- 3.11.10 The Development will provide a Biodiversity Net Gain of 117.81%, exceeding the 10% net gain that is required by legislation. The proposal will also employ a range of energy reduction techniques to achieve a sustainable and efficiently design scheme, including high performance building fabric, double glazing and energy efficient lighting, services and use of mechanical supply and extract ventilation systems with heat recovery (MVHR) in the residential units.
- 3.11.11 The Development will also secure 28 car parking spaces to serve the new homes, and 52 cycle parking via two secure stores.

3.11.12 The table below detail the new homes to be provided:

**Table 1 – Schedule of accommodation for new scheme**

Size	Number of units	Percentage of overall mix
1-bed 2-person	16	31%
2-bed 3-person	2	4%
2-bed 4-person	29	57%
3-bed 6-person	4	8%
Total	51	100%

**3.11.13 Public benefits**

3.11.14 A summary of the benefits of the scheme is as follows.

3.11.15 **Social benefits:** The residential proposals comprise the provision of high-quality residential housing all of which will be affordable housing which will help meet local housing needs. The proposals will also introduce new residents to the area and expand the local community. The provision of a range of dwelling sizes will meet the needs of different occupiers and will assist in creating a strong and balanced community.

3.11.16 **Economic benefits:** In summary, the Development will also contribute to economic growth during the construction period. The construction of new development creates a range of employment opportunities within the local and wider economy and has been acknowledged by the Government as a key driver for boosting housing delivery as required by the National Planning Policy Framework (NPPF). Constructing the Development will support jobs directly on site as well as indirect support to additional jobs in the supply chain. The proposals will also contribute to the economic role of sustainable development by delivering land to improve choice and competition in the residential marketplace. The procurement process will seek to secure employment and training opportunities are targeted at local people to ensure residents of the borough have the chance to benefit from the employment the scheme will deliver.

3.11.17 **Environmental benefits:** In summary, the Development will remove the existing extensive hard surfacing and under-utilised land around the Land and will provide new buildings of high-quality design that will improve the contribution of the Land to the local area. The proposals include improvements to the public realm, improving the local environment for residents. The proposals seek to introduce soft landscaping areas and green spaces which will deliver ecological and environmental benefits both on the Land and to the surrounding area.

New homes will be built to modern standards which will reduce negative environmental impacts.

#### **4. Alternative Options Considered and Rejected**

- 4.1 Do nothing option: if the Council decides not to appropriate the Land, then there is the potential that affected interest holders could bring injunction proceedings. This could stop the project coming forward or significantly delay the delivery of the Development, threatening the delivery of new affordable homes and other public benefits such as those outlined at paragraph 3.3.

#### **5. Consultation Undertaken or Proposed**

- 5.1 The Council undertook three rounds of consultation in respect of the Planning Permission, which included letters being sent to neighbouring occupiers and notices displayed on the Land and within a local newspaper.

#### **6. Implications**

<b>Issue</b>	<b>Implications</b>
Corporate Plan	This supports the Health and Housing Corporate priority, to ensure that everyone has access to decent housing.
Financial, Resource and Property	This report is seeking approval to proceed with the appropriation of land for planning purposes under section 122 of the Local Government Act 1972 to facilitate the development of the Land. There are no direct financial implications from the appropriation itself, however, residents and businesses affected adversely by rights of light both within the redevelopment area and neighbouring it those with rights will be able to claim compensation resulting from the reduced value of their property. These costs have been built into the overall scheme costs.
Legal, Statutory and Procurement	<p>Under section 122 of the Local Government Act 1972 (LGA), appropriation may be made where the land is no longer needed in the public interest of the locality for the purpose for which it is held immediately before appropriation. In this regard, a broad view of local need (taking account of the interests of all residents in the locality), has to be taken and officers consider that this test has been met. Officers are also satisfied that the use of appropriation would be in the public interest and proportionate to the objectives of the redevelopment scheme for the purpose of the Human Rights Act 1998.</p> <p>This report seeks approval from the Policy and Resources Committee to appropriate, under section 122 of the LGA, land belonging to the Council which is currently held for use as a car park. The Land is now required for planning purposes for redevelopment which consists of affordable units.</p>



	<p>Any reference to appropriation for planning purposes is, by virtue of the provisions in section 246 of the Town and Country Planning Act 1990 (TCPA), regarded as a reference to appropriation for the purposes for which land can compulsorily be acquired under section 226 TCPA. By virtue of s226(1A) TCPA a local authority must not exercise the power granted under s226(1)(a) unless the development, redevelopment or improvement on or in relation to the land is likely, they think, to contribute to the achievement, the promotion or improvement of any one of more of the following objectives - the economic, the social and/or the environmental wellbeing of the area. This report details that the proposed development will provide 51 new residential dwellings.</p> <p>The Council must also be satisfied that the Land is no longer required for the statutory purposes for which it was originally held before the appropriation. This “surplus to requirements” component of s122 of the LGA enables the Council to prioritise relative needs. It follows that the Council is entitled to look at the current use of the Land as well as the prospective use of the Land and on this project, what the Land can deliver. The Council can consider matters such as whether sufficient use is currently made of the Land and the need to secure an enhanced form of redevelopment.</p> <p>Appropriation however requires more than a mere decision to hold land for a different purpose. An authority cannot properly appropriate land to planning purposes unless it considers that the resulting interference with third party rights is necessary. A local authority cannot properly appropriate land to planning purposes unless it considers that it has good reason to interfere with third party rights which would be overridden by section 203 of the Housing and Planning Act 2016 as outlined below. Reliance on s203 of the Housing and Planning Act 2016 to override the rights of adjoining owners and any other property rights on an appropriation of land for planning purposes is dependent upon the requirements in s226 TCPA, having been satisfied that there is a compelling case in the public interest for the appropriation of this land, having regard to the European Convention on Human Rights must apply before the redevelopment of the Land commences.</p> <p>The enabling provisions in s203 (1) and (4) of the Housing and Planning Act 2016 are required for the construction, maintenance and use of the redevelopment, to the extent that this will interfere with private rights of adjoining owners. The RoL Report concludes that due to the proposed development neighbouring buildings may experience interference with their private rights (see Appendix [2]). The operative provisions in section 203-207 are necessary in order to override these rights as well as to override other property rights, including any unknown rights that may impede the construction or use of the units on the Land.</p> <p>In order to ensure that the redevelopment can proceed within the agreed timescale and cost it is necessary for the Council to appropriate the site for planning purposes. This will not preclude negotiations with the adjoining owners who will be entitled to compensation in line with the relevant statutory provisions.</p>
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	<p>If the Council were to commence the development works without appropriating the site for planning purposes, it would potentially be infringing those affected rights to light or any other rights. The remedy for such an infringement by the affected persons is an injunction. It is an equitable remedy and is within the court's discretion to grant. The court can award damages where it considers this an adequate remedy. If the adjoining owners choose to institute proceedings for an actionable injury the court might also grant an injunction pending the court's decision on whether there has been an infringement of their rights or not. The consequences of this for the Council will be to set back commencement of the development and delivery.</p>
Crime and Disorder	None identified at this stage.
Environment and Climate/Ecological Emergency	The report has outlined that due to the change of use of the land and associated landscape works there will be additional Bio-Diversity net gain.
Health and Wellbeing	Overall improved housing has a positive impact on health and wellbeing of those residents.
Safeguarding of Children, Young People and Vulnerable Adults	None identified at this stage.
Risk Management and Health and Safety	None identified at this stage.
Equality and Diversity	<p>The Council must, in the exercise of its functions, have due regard to the need to eliminate discrimination, harassment and victimisation, and to advance equality of opportunity, and foster good relations, between those who share a relevant protected characteristic and those who do not share it (section 149 Equality Act 2010). The Council must also have regard to potential interference with Article 1 and Article 8 of the European Convention on Human Rights (ECHR).</p> <p>Article 1 of the First Protocol of the European Convention on Human Rights (ECHR) provides that every natural or legal person is entitled to peaceful enjoyment of their possessions ("human rights"). Appropriation of property engages s.203 to authorise interference with rights of light involves interference with a person's rights under this Article. As these rights are enjoyed by corporate bodies as well as individuals all of those whose rights will be affected can claim an infringement. However, the right to peaceful enjoyment of possessions provided under this Article is a qualified rather than absolute right, as the wording of Article 1 of Protocol 1 permits the deprivation of an individual's possessions where it is in</p>

	<p>the public interest and subject to the conditions provided for by law and by the general principles of international law.</p> <p>Article 8(1) provides that everyone has the right to respect for his private and family life, his home and his correspondence. Article 8 would be engaged as a result of interference with rights to light or other rights connected to a private residence. Article 8(2) allows for interference which is "in accordance with the law and is necessary in a democratic society in the interests of national security, public safety or the economic well-being of the country, for the protection of health and morals, or for the protection of the rights and freedoms of others".</p> <p>There must therefore be a balancing exercise between the public interest and the individual's rights whereby any interference in the individual's rights must be necessary and proportionate. "Proportionate" in this context means that the interference must be no more than is necessary to achieve the identified legitimate aim, thereby striking a "fair balance" between the rights of the individual and the rights of the public.</p> <p>Planning permission has been granted for the development of the Land and on the basis that it accorded with national and local planning policies. The public benefits arising from the Development, and thus the public interest, are set out earlier in this report. Furthermore, notwithstanding the overriding of their 'rights to light or any other right' compensation will still be available to those who are affected. On this basis it is considered that the public interest in and benefits arising from the development of the Land outweighs the rights of the individuals to peaceful enjoyment of their possessions and to their homes and that the proposed use of s.203 powers results in a proportionate infringement.</p> <p>The Council has considered the equality impacts of the appropriation of the Land. An EIA has been completed and is shown in Appendix II. The proposed Development of the Land is considered overall to have a positive equality impact, through the delivery of new housing including affordable housing. Whilst the appropriation of the Land would likely result in interference with rights over the Land, compensation will be payable to those who are affected, and it is not considered that such interference would undermine the public sector equality duty</p>
Privacy and Data Protection	Non identified at this stage.

## **7. Appendices**

7.1 The following documents are to be published with this report and form part of the report:

- Appendix I: Appropriation Plan
- Appendix II: Rights of Light Analysis Report – EXEMPT
- Appendix III: Equalities Impact Assessment

## **8. Background Papers**

Sittingbourne Town Centre Progress Cabinet Report - 6 June 2012 and

Spirit of Sittingbourne Development Agreement – Appropriation of Land for Planning Purposes - Director of Regeneration Delegation report 11 October 2012