

Report To: Cabinet

Date of Meeting: 7 March 2022

Report Title: Cornwallis Street Car Park

Report By: Peter Grace, Assistant Director Financial Services and Revenues

Key Decision: Y

Classification: Open

Purpose of Report

For the Council to use the existing car park for an alternative use it has to formally appropriate the land - which it already owns.

Recommendations

- 1. Resolve that Cornwallis Street Car Park, as shown edged red on the attached plan, is no longer required for the purposes for which it is currently held (i.e. as a car park).**
- 2. Approve the appropriation of the land pursuant to section 122 of the Local Government Act 1972 for the planning purposes of facilitating redevelopment for residential and other uses pursuant to section 226 of the Town and Country Planning Act 1990.**
- 3. Approves the use of powers to override any easements and other rights in respect of the land pursuant to section 203 of the Housing and Planning Act 2016.**
- 4. Agrees the approach of notifying, engaging with, and negotiating with affected third parties.**

Reasons for Recommendations

1. The appropriation of the car park is necessary in order to secure the benefits from the redevelopment of the site to provide a new hotel.
2. Appropriation of the site will enable the development to proceed without the risk of an injunction from adjoining landowners.

Introduction

1. On 4 January 2021 Cabinet resolved to proceed with redevelopment of Cornwallis Street Car Park as a hotel and furthermore delegated authority for revised terms to be agreed with the proposed operator. An agreement with Premier Inn was completed on 20 January 2021.
2. A planning application to construct an 84 bedroomed hotel with ancillary ground floor restaurant, car parking, landscaping and all associated works was submitted on 3 September 2021. This was considered at Planning Committee on 23 February 2022.
3. For a Council to use its land for a different purpose it needs to formally appropriate the site for planning purposes. The redevelopment will potentially override third party rights, e.g. right to light.

Legal Process

4. Section 122 of the Local Government Act 1972 provides a power to the Council to appropriate land from one purpose to another where the land “is no longer required for the purpose for which it is held immediately before the appropriation”. The key procedural points are as follows:
 - a) The land must already belong to the Council.
 - b) The land must no longer be required for the purpose for which it is currently appropriated.
 - c) The purpose for which the council is appropriating must be authorised by statute.
5. By sections 226 and 227 of the Town and Country Planning Act 1990 the Council is authorised to acquire by agreement any land which they require to facilitate the carrying out of development, re-development or improvement on or in relation to the land, where they think that this will contribute towards the promotion or improvement of the economic, social or environmental well-being of their area.
6. The appropriation of land pursuant to this provision does not result in the overriding of third-party rights; this is facilitated by the powers set out in Section 203 of the 2016 Act (Section 203) and provides that building or maintenance work/use which interferes with rights or breaches restrictions as to user is authorised if:
 - a. planning consent exists for the building works or use.
 - b. the work is carried out on land that has been appropriated by the Council for planning purposes after 13 July 2016.
 - c. the land could be compulsorily acquired by the Council for the purposes of the building works or maintenance/use of buildings or works constructed.
 - d. the building work or maintenance/use is for purposes related to the purposes for which the land was acquired or appropriated.

Justification for Use of Section 203

7. The redevelopment of the site supports several priorities in the Corporate Plan and the Town Deal Investment Plan. As well as providing much needed visitor accommodation, constructing a hotel will provide substantial economic benefits both in terms of visitor spend, new jobs created and sustainability of the town centre and night-time economy.
8. In terms of the impact of parking in the surrounding area, the planning application acknowledged that the proposed development will result in the loss of a parking area currently in public use and would also create an additional parking demand in the surrounding area. However, the submitted information and the proposed parking strategy demonstrated that any overspill parking is only likely to occur overnight and this can be sufficiently accommodated in the nearby area. With this in mind, it was considered that the development will not have an unacceptable impact on the existing parking pressures in the area.
9. Certain properties have been identified which may benefit from a right to light over the site. Engaging Section 203 means that any beneficiaries of third-party rights, such as a right to light, that are interfered with because of the carrying out of the development cannot prevent the development from proceeding by seeking an injunction from the courts, and as a result the development proposed can proceed. So, the potential existence of these rights means that unless the provisions of Section 203 are engaged the development could be prevented from proceeding by the owners of the affected properties.
10. Section 203 provides that those with the benefit of such rights (that are interfered with) will be entitled to compensation which will be calculated based on the diminution in value of their land. If it is agreed to appropriate the site, we would look to implement a proactive approach of notifying, engaging with and negotiating with affected third parties on this basis through our Right to Light advisers.

Economic/Financial Implications

11. An assessment of the compensation payable has been provided by our Rights of Light advisers and is included within the costings for the scheme. In addition to compensation, the Council will also be responsible for payment of advisor's fees for affected parties.
12. The Council will look to ensure that the car park is retained for its existing use for as long as possible, whilst the contractor is mobilising for the construction works.

Local People's Views

13. No objections were received when the proposed Revocation of the Parking Order was advertised in the Hastings & St Leonards Observer, at the car park and on the Council's website from 26 November 2021 to 24 December 2021.
14. Parties who the Council consider to be affected by the proposed development will be notified that the Council has appropriated the car park and invited to appoint advisors and commence discussions/negotiations with the Council's advisers.

Risk Management

15. Officers have considered the associated risks at all stages of the project. As part of the due diligence an initial Rights of Light report was commissioned from external experts and a

further report has been received now that the design of the hotel to be built has been finalised.

16. It is considered that appropriating the site for planning is the best course of action from a risk management perspective.

Conclusion

17. In conclusion it is recommended that the Council use their powers to appropriate the land for planning purposes. The significant public benefit from the proposed redevelopment of the car park are of sufficient magnitude to justify the appropriation.

Timetable of Next Steps

18. Please include a list of key actions and the scheduled dates for these:

Action	Key milestone	Due date (provisional)	Responsible
Cabinet agrees to appropriate the site	Site is appropriated	7 March	Estates Manager
Discussions commenced with affected parties	Letter is sent	8 March	Estates Manager
Compensation claims are settled	Agreements documented and payments made to affected parties	tbd	Rights of Light advisers/Estates Manager/Legal

Wards Affected

Castle;

Policy Implications

Have you used relevant project tools?: Y/~~N~~

Please identify if this report contains any implications for the following:

Equalities and Community Cohesiveness	Y/ N
Crime and Fear of Crime (Section 17)	Y/ N
Risk Management	Y/ N
Environmental Issues & Climate Change	Y/ N
Economic/Financial Implications	Y/ N
Human Rights Act	Y/ N
Organisational Consequences	Y/ N
Local People's Views	Y/ N
Anti-Poverty	Y/ N
Legal	Y/ N

Additional Information

Attached plan showing the extent of the site edged red.

Officer to Contact

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