Report to CABINET

Appropriation of land for Planning Purposes for land at Southlink, St Mary's.

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Report Author:
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24th August 2026

Reason for Decision

The purpose of the report is to seek authority for the Council to utilise the powers under s122 of the Local Government Act 1972 to appropriate the land for planning purposes at Southlink, Oldham, to facilitate its development by Vistry Partnership who were approved as the Council's preferred developer by Cabinet in October 2024.

This report recommends that land at Southlink be advertised of the Council's intention to appropriate land for Planning Purposes. Any objections to the proposed appropriation received will be contained in a future Stage 2 report with further recommendations.

Under the Council's Property Protocols decisions relating to the appropriation of land are made in two stages. The first stage (subject) report is to recommend the in-principle appropriation of the land for Planning purposes, subject to the advertising in an appropriate publication of the proposal and allowing time for objections. The second stage (future) report will make recommendations for appropriation as mixed use having regard to any objections which have been received during the consultation period.

Recommendations

It is recommended that the Council authorises the proposed appropriation for planning purposes in respect to the Council owned land at Southlink, Oldham (as shown edged red in Appendix One of the report) in accordance with the provisions of s122 of the Local Government Act 1972.

Appropriation of land

1 Background

1.1 In March 2022 Cabinet approved for the Council to carry out a competitive land sale of vacant land at Southlink jointly with land owned by Transport for Greater Manchester (TfGM) to a developer/house builder. The Council own 54.2% of site and TfGM 45.8%. Any capital receipt received for the land would be split on this basis. This is shown at Appendix 2.

1.2 A competitive land sale exercise was completed to secure a developer and Tilia Homes were appointed in August 2022. In June 2023 Tilia withdrew from the sale as they were unable to deliver the scheme.

1.3 In September 2023, Corporate Property Board approved that the site be re-marketed as a land disposal with a greater emphasis placed on deliverability and conditionality.

1.4 The Vistry Partnership was chosen to develop land at Southlink following the completion of a competitive land sale process. Officers have worked with Vistry to prepare a Planning Application to deliver 146 affordable homes, including 32 at Social Rent, with all homes constructed to the low carbon 'Future Homes Standard'.

2 Current Position

2.1 During the course of de risking the site prior to disposal the purchaser has identified that the land proposed to be sold is subject to rights in favour of various adjoining properties on Southlink Business Park. It is not thought that any of those rights are exercised over the land being sold and that they were granted on the basis that the Business Park may expand.

2.2 The purchaser requires the rights to be extinguished as express release of the rights could be a long process with the owners of the properties who benefit from the rights. Appropriation of the rights by statutory means is considered the most efficient way of extinguishing the rights. Appropriation would be under the Local Government Act 1972.

2.3 Where land is acquired or appropriated for planning purposes, it is then held by the Council under the statutory provisions of Section 122 of the Local Government Act 1972. The practical consequence of this is that the erection, construction or carrying out of any maintenance of 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. The rights are overridden whether the Local Authority or a person deriving title from it undertakes the development.

2.4 The power contained in Section 122 of the Local Government Act 1972 effectively converts any right of way into a right to compensation which may arise from the interference with such rights, it also removes the potential for excessive financial

claims and most importantly, it removes the potential for such owners or occupiers to frustrate the development by obtaining an injunction to prevent interference with their rights.

3. Options/Alternatives

3.1 Option 1:

Not to utilise the powers contained in Section 122 of the Local Government Act 1972. This option is not recommended as it would result in long delays in delivering the proposed new homes.

3.2 Option 2:

To satisfy Vistry Partnership in terms to enable the timely development of new homes to be delivered, it is proposed that the Council appropriates the land shown edged red on the plan attached in Appendix 1 for planning purposes in accordance with Section 122 of the Local Government Act 1972.

4 Preferred Option

4.1 Option 2 - It is considered preferable for the Council to utilise its powers under Section 122 of the Local Government Act 1972 in respect to the site shown edged red on the attached plan.

5 Consultation

5.1 Ward Members were consulted on the disposal of the site to Vistry and were fully supporting of this decision. This report will be shared with the Corporate Property Board.

6 Financial Implications

6.1 It is not currently anticipated that there will be any compensation claims to the Council arising from the appropriation of the land.

6.2 If there are any successful compensation claims they will need to be met from within the existing Place revenue budget.

(James Postle)

7 Legal Implications

7.1 Under the Land and Property Protocol the Council is empowered to appropriate land for its statutory purposes by way of statute.

7.2 Section 122 of the Local Government Act 1972 provides that a principal council may appropriate for any purpose for which the council are authorised by this or any other enactment to acquire land by agreement any land which belongs to the council and is no longer required for the purpose for which it is held immediately before the appropriation; but the appropriation of land by a council by virtue of this subsection shall be subject to the rights of other persons in, over or in respect of

the land concerned. The key legal test is whether the land is no longer required for its existing purpose. In determining this the council will need to carry out a balancing act to determine if the public need for the existing use of the land can be adequately met by other facilities or by replacement facilities.

7.3 Appropriation of land for planning purposes means the appropriation of it for purposes for which land could have been acquired under section 226 of the Town and Country Planning Act 1990 i.e. if the Council think that the acquisition (appropriation) will facilitate the carrying out of development, redevelopment or improvement (including regeneration) on or in relation to the land and the Council think that the development redevelopment or improvement (including regeneration) is likely to contribute to the achievement of any one or more of the following objects – (a) the promotion or improvement (including regeneration) of the economic well-being of their area (b) the promotion or improvement (including regeneration) of the social wellbeing of their area (c) the promotion or improvement (including regeneration) of the environmental wellbeing of their area.

7.4 In accordance with Section 122 (2A) of the Local Government Act 1972, the Council may not appropriate it unless before doing so, it gives notice of its intention to be advertised on two consecutive weeks in a newspaper circulating in the area in which the land is situated. The Council must consider any objections lodged before making a decision either for disposal or retention of the land having regard to those objections.

7.5 The Council's Land and Property Protocol states that decisions to appropriate open space must be made in two stages. The first stage report is to recommend the in-principle appropriation of the subject land to be re-classified as mixed use subject to the advertising of the proposal and allowing time for objections.

7.6 This report is a first stage report.

7.7 The relevant process set out in the Council's Land and Property Protocol must be followed.

7.8 The author of the report has confirmed continued compliance with the Council's Land and Property Protocol.

(Rebecca Butterworth, Solicitor)

8 **Equality Impact, including implications for Children and Young People**

8.1 Not Applicable

9 **Key Decision**

9.1 Yes

10 **Key Decision Reference**

11.1 RBO-12-26

12 **Background Papers**

12.1 The following is a list of background papers on which this report is based in accordance with the requirements of Section 100(1) of the Local Government Act 1972. It does not include documents which would disclose exempt or confidential information as defined by the Act.

13 Appendices

13.1 Red line Plan of Council owned land
13.2 Red Line Plan of site