



Derby City Council

COUNCIL CABINET
11 November 2015

ITEM 10

Report of the Cabinet Member for Communities
and City Centre Regeneration.

A52 Wyvern Transport Improvements land acquisition

SUMMARY

- 1.1 The report seeks Cabinet approval to initiate compulsory purchase proceedings in relation to land interests required to facilitate the A52 Wyvern Transport Improvements scheme. This will affect freehold, leasehold interests and third party rights.
- 1.2 Cabinet, having previously approved the principle and general layout of the scheme, were advised, in June 2015, that further authority would be sought to start work on a Compulsory Purchase Order (CPO) when the requirements for third party land had been identified.
- 1.3 Cabinet is asked, given the significant benefits of the scheme to Pride Park, Wyvern and A52, to authorise the exercise of the City Council's powers of compulsory purchase to acquire the land necessary for the implementation of the scheme. The extent of land to be acquired is identified in Appendix 2. The area includes the working area required during construction of the scheme.

RECOMMENDATION

- 2.1 That Cabinet authorises the making of a Compulsory Purchase Order (or Orders) under the Acquisition of Land Act 1981 (pursuant to powers under Section.239 Highways Act 1980) as necessary to acquire all the land identified in Appendix 2 and associated interests for the purpose of carrying out the A52 Wyvern Transport Improvements Scheme.

- 2.2 That the Acting Strategic Director of Communities and Place be authorised, following consultation with, as appropriate, the Director of Finance, Director of Governance and the Head of Strategic Asset Management and Estates to:
- 2.2.1 identify any additional Highway Act 1980 powers that should, for the purpose of the acquisition, be referred to in the Compulsory Purchase Order(s)
 - 2.2.2 identify where (if appropriate) rights over any parts of the Order land should be acquired rather than the full freehold interest
 - 2.2.3 make minor changes to the boundaries of the land identified in Appendix 2
 - 2.2.4 include within the Compulsory Purchase Order(s) any land already owned by the Council where appropriate to clear the title of other interests pursuant to section 260 of the Highways Act 1980
 - 2.2.5 take all necessary steps to secure the making, confirmation and implementation of the Compulsory Purchase Order(s);
 - 2.2.6 acquire the legal interest in the land, whether by voluntary agreement or compulsorily using statutory powers set out in the preceding Highways Act 1980;
 - 2.2.7 take all necessary action to deal with all matters relating to the payment of compensation and statutory interest including where necessary and/or appropriate, instituting or defending related proceedings;
 - 2.2.8 enter into any appropriate indemnity agreements relating to third party funding for the scheme.
 - 2.2.9 take all other necessary action to give effect to these recommendations.

REASONS FOR RECOMMENDATION

- 3.1 The A52 experiences severe congestion in the morning peak hour when traffic can queue back beyond the Borrowash Bypass junction and can impact on both the strategic and local highway network. Congestion occurs when a high volume of traffic exits the A52 into Pride Park and drivers weave across lanes when leaving the A52 and then slow to negotiate the constrained Wyvern junction. Without the improvements journeys on the A52 and to Pride Park and Wyvern will be significantly delayed by congestion, it is likely that some drivers will divert onto local distributor roads resulting in increased delays on local routes affecting local bus services.
- 3.2 The A52 scheme will improve existing conditions within Pride Park as well as accommodate some background traffic growth and facilitate a further extension to Pride Park and Wyvern. The scheme will improve accessibility for all highway users through the creation of shared use cycle and pedestrian routes, a replacement footbridge and crossings at all junctions. The scheme will improve vehicle flow and safety on the A52 and Wyvern Way through the creation of additional lanes and

junction improvements.

- 3.3 In order to construct the scheme we need to acquire privately owned land essential to accommodate the pedestrian and cycle improvements, additional highway capacity and safety improvements.



SUPPORTING INFORMATION

- 4.1 In July 2013, the Derby, Derbyshire, Nottingham and Nottinghamshire Local Enterprise Partnership, prioritised £6,690,000 of its indicative budget towards the A52 scheme, against a scheme cost which ranges between £10,576,000 and £12,275,000. The £10,576,000 option currently forms part of the approved capital programme. The £12,275,000 estimated scheme cost for the preferred solution includes £1,699,000 for maintenance works to the A52.
- 4.2 A significant output of the scheme is delivery of highway network management improvements within Pride Park and Wyvern and on the A52. Pride Park is a major employment site close to the city centre and the scheme will help protect and retain employment on this strategic site.
- 4.3 In June 2015 we reported a modified design to Cabinet and in July 2015 we consulted highway users, local businesses and landowners on the revised scheme. There is significant public support for the scheme.

The A52 Wyvern Transport Improvements scheme is identified in the emerging Derby City Local Plan, Part 1: Draft Core Strategy as part of a strategy to support the implementation of strategic proposals and initiatives that help create an economically and environmentally sustainable transport network. This document sets out the Council's plan to seek to negotiate financial contributions to schemes including the A52, in appropriate circumstances. Proposals that prejudice the implementation of these schemes will not be permitted. The plan is currently out for consultation and will be Submitted to the Secretary of State later this year. It is expected that the plan will be adopted late summer/autumn 2016. This will then be the Council's Development Plan and will carry statutory weight.

- 4.4 We are progressing two scheme designs. The full scheme includes the mitigation required to accommodate the Derby Triangle development. The do minimum scheme does not allow for the additional development traffic. The main differences are:

- The do minimum does not include signalisation of the Sidings junction
- The Stanier Way and Wyvern Way junction will be partially signalised
- There will be less widening on Wyvern Way

If we are not able to secure match funding from the Derby Triangle development this will be a significant risk to the scheme and we will only be able to progress the do minimum scheme.

- 4.5 The majority of the scheme falls within the boundaries of a road or is land outside but adjoining the boundary of an existing highway and, under the General Permitted Development Order, 2015, is permitted development. However, two small areas involve the creation of new highway and planning permission will be required. We will be submitting a planning application and supporting documents in November 2015.
4. 6 The privately owned land affected by the scheme is currently commercial land and no residential properties or land are directly affected by this proposal. Whilst there is no direct impact upon residential properties there may be an indirect impact from additional noise, fumes and lighting on the scheme. This could give rise to claims for compensation during the works and once the road has opened. The potential for this will be assessed as part of the preparation of the major scheme business case.
4. 7 CPO Procedure
This can be summarised in three stages, set out below, which taken together could take between 16 to 22 months from Cabinet resolution to confirmation of the CPO, depending on the level of objection. To meet the planned programme for the road scheme acquisition of the land must take place within 3 years, Whilst officers will seek to acquire the land from the owners by negotiation it is imperative that the CPO process is initiated without delay. The CPO stages can be summed up as follows:
- Stage One (approximately 2-3 months)
- Formulation and City Council Resolution
 - Completions of a CPO indemnity agreements
 - Referencing (collating all the title detail and information for the land and interests to be acquired)
 - Preparing Statement of Reasons and CPO Schedule and Map
 - Making Order
 - Notification and Publicity
- Stage Two (approximately 12- 18 months)
- Objections
 - Negotiations
 - Inquiry
 - Confirmation of CPO
- Stage Three
- Challenge period (6 weeks)
 - Possession
 - Compensation and negotiation
- 4.8 Appendix 2 identifies all the third party land required for the scheme, which needs to be acquired, and Appendix 3 identifies the land in Council ownership, which as part of the process may also be included within the schedules of the CPO.
- 4.9 The costs of the CPO process have been included in the scheme costs for the A52 project.

OTHER OPTIONS CONSIDERED

- 5.1 A feasibility study was carried out to look at a range of options to address congestion and improve access in the vicinity of the A52 and Wyvern junctions. Options reported to Cabinet in February 2014 included grade separated solutions, these options were sifted out because of environmental impacts, cost and benefit levels and deliverability of the grade separated options made them unviable.
- 5.2 Modifications were made to the preferred feasibility sketch during the detailed design phase when the scheme was further improved to allow for potential cost savings and following discussions with landowners and developers. The modifications were agreed by Cabinet on 10 June 2015.

This report has been approved by the following officers:

Legal officer Financial officer Human Resources officer Estates/Property officer Service Director(s) Other(s)	Stephen Teasdale Amanda Fletcher Alex Ward
For more information contact: Background papers: List of appendices:	Tara McKenna 01332 641755 tara.mckenna@derby.gov.uk None Appendix 1 – Implications Appendix 2 – Plans of third party land requirements (available on CMIS) Appendix 3 – Plans of Derby City Council owned land (available on CMIS)

IMPLICATIONS

Financial and Value for Money

- 1.1 The cost of the land purchase is included within the forecast project costs. If the grant funding isn't secured the project will not go ahead and there is a risk of abortive revenue costs. It is not anticipated that any land will be acquired prior to securing all necessary funding; therefore, any abortive costs will be minimal. If any property is affected by blight this may create additional costs for the Council.
- 1.2 The approved corporate capital programme includes the preferred A52 Wyvern Transport Improvements Scheme, excluding the maintenance element, at a budget of £10,576,000 subject to the outstanding addition of the current funding gap:
 - 2014/15 - £200,000 corporate borrowing
 - 2015/16 - £376,000 corporate borrowing
 - 2016/17 - £6,690,000 D2N2 LTB indicative grant funding. Bid still to be confirmed, without this funding the scheme will not go ahead
 - 2017/18 – £3,310,000 funding gap.

All costs are provided as forecast costs or costs we would anticipate at the planned time of construction in 2016/17 and 2017/18. Part of the original bid to the D2N2 LTB was that the scheme would secure a £3,310,000 local contribution to the project. A source of funding for the £3,310,000 has not yet been identified, but it is expected that this will be funded through external third party contributions, developer agreements, or other grant opportunities.

- 1.3 A detailed cost estimate of the preferred options will be undertaken by the preferred contractor during Early Contractor Involvement. We anticipate that a revised cost will be ready by December 2015.

Legal

- 2.1 A compulsory purchase order should only be made where there is a compelling case in the public interest. The purpose of making a compulsory purchase order, therefore, must sufficiently justify interfering with the human rights of those with an interest in the land affected. Regard should be had, in particular, to the provisions of Article 1 of the First Protocol to the European Convention on Human Rights (right to peaceful enjoyment of possession).

- 2.2 Section 239 Highways 1980 ('the 1980 Act') empowers highway authorities to compulsorily acquire land, for the improvement and construction of highways. Section 240 empowers the acquisition of land required for use by a highway authority in connection with the execution of highway works. Section 246 empowers the acquisition of land to mitigate the adverse effects of constructing or improving a highway. Section 250 allows a highway authority to acquire rights over land where required in connection with highway works.
- 2.3 Before the acquiring authority submits the CPO for confirmation, a notice must be published for two successive weeks in one or more local newspapers and must also be fixed on or near the land covered by the order.
- 2.4 If no objections are made and the Minister is satisfied that the proper procedure for serving and publishing notices has been observed, he may authorise the council to confirm the CPO itself. Alternatively he may confirm, with or without modifications, the CPO himself. Theoretically the Minister could decide not to confirm the CPO even if there are no objections but in practice this does not occur.
- 2.5 If any objections are raised then the Minister may order an inquiry or may deal with the matter by way of written representations. Following this, the Minister will decide to confirm, modify or reject the CPO.
- 2.6 The making and confirmation of the CPO gives the power to acquire the land but does not itself obligate the Council to proceed with acquisition. There are, however, procedures where an owner whose land is blighted by a confirmed CPO may apply for the Council to purchase the land affected.

Personnel

- 3.1 A Project Board and Project Team have been set up to manage delivery of the A52 project. External specialist resources will undertake the CPO work supported by colleagues in Legal Services.
- 3.2 Acquisitions, either by CPO or by agreement, will be managed within Strategic Asset Management and Estates (SAM&E). SAM&E will also deal with the assessment of compensation claims resulting from the scheme. An officer is being recruited to support this and the Our City Our River project acquisitions. Some external specialist advice will be required to support the acquisitions process to deal with more complex purchases and resulting compensation claims.

IT

- 4.1 None

Equalities Impact

- 5.1 The major scheme business case required to bid for local major scheme funding through the D2N2 LEP will require a detailed appraisal of social distributional impacts of the scheme.

Health and Safety

- 6.1 The major scheme business case required to bid for local major scheme funding through the D2N2 LEP will require a detailed appraisal of environmental and safety impacts.

Environmental Sustainability

- 7.1 Environmental Impact Assessment scoping and screening as part of the planning process confirmed that an EIA is not required. An Environmental Statement will be submitted with the planning application and environmental impacts have been taken into consideration in selecting the preferred option. The major scheme business case required to bid for local major scheme funding through the D2N2 LEP will require a detailed appraisal of environmental impacts.

Property and Asset Management

- 8.1 The scheme will require the acquisition of property and dealing with compensation claims. A detailed estimate of acquisition costs and compensation will need to be provided for the purposes of the major scheme business case.
- 8.2 Once property is required it will need to be secured and effectively managed pending demolition to prevent issues of squatting, drug abuse and general anti-social behaviour. There will be an on-going revenue cost for this during the life of the scheme.

Risk Management

- 9.1 Included within the project governance is a risk register where risks are recorded to ensure that robust risk management procedures are in place so that risks are managed appropriately. The cost and timescales involved in acquiring land has been identified as a significant risk to the project.

Corporate objectives and priorities for change

- 10.1 Council Plan 2015 -2018, the A52 scheme helps Derby City Council meet the pledge:
- A safe and pleasant environment for you to live and work
 - A strong community where residents feel empowered and businesses are supported to grow
 - An ambitious and forward looking city with good prospects for everyone

How we will deliver the pledges:

Employment, housing and regeneration – working with key partners to make sure that Derby is an attractive place for business and residents and creating jobs for our communities.