



**Meeting:** Council

**Date:** 6 February 2014

**Wards Affected:** Blatchcombe

**Report Title:** Western Corridor Improvement, Great Parks Phase 2 Entrance – Acquisition of land through Compulsory Purchase Orders

**Is the decision a key decision?** Yes

**When does the decision need to be implemented?** March 2014

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## **1. Purpose and Introduction**

- 1.1 To achieve a way forward to ensure that the junction improvement scheme for Kings Ash Road/Spruce Way, Paignton is delivered by seeking Members' approval to make a Compulsory Purchase Order for the land required for the scheme, to enable it to be acquired if agreement cannot be reached by negotiation with the land owners.

## **2. Proposed Decision**

- 2.1 That negotiations with the landowners for acquisition of the land required for the scheme be commenced to completion and to acquisition by agreement when possible.
- 2.2 That authority be delegated to the Executive Head of Commercial Services to make a Compulsory Purchase Order for the land required for the Kings Ash Road/Spruce Way Junction Improvement Scheme affecting land adjacent to Kings Ash Road in accordance with the following:-
- 2.3 That Torbay Council makes a Compulsory Purchase Order under sections 239, 240, 249, 250 and 260 of the Highways Act 1980 for the acquisition of all interests in the land (except those already owned by the Council) and new rights within areas shown (shaded pink for areas of land in respect of which all interests are to be acquired and shaded blue for the areas over which new rights are to be acquired) on plan number 8/09/12\_04, attached as Appendix 1 for the purpose of highway improvement.
- 2.4 Subject to approval of 2.2 above, that the Executive Head of Commercial Services be authorised to:-
- (a) Take all necessary steps to secure the making, confirmation and implementation of the Compulsory Purchase Order including the publication

and service of all notices and the presentation of the Council's case at any Public Inquiry;

- (b) Acquire interests in land and new rights within the Compulsory Purchase Order either by agreement or compulsorily; and,
- (c) Approve agreements with land owners setting out terms for the withdrawal of objections to the Order, including where appropriate seeking exclusion of land or new rights from the Order.

2.5 That detailed design and preparation of proposals continue for the junction improvement scheme with new access in order that a scheme can be implemented by a future developer(s) of Phase 2 (not Torbay Council), following acquisition of all required sections of land.

### 3. Reason for Decision

3.1 Planning consent has been granted for a highway improvement to the A380 Kings Ash Road at its existing junction with Spruce Way to form a new access into land to the west of the junction for the next phase of the 'Great Parks' housing Development. The proposed access will not be constructed by the Council, but by a future developer(s) of Phase 2. The new access, and estate road through Phase 2, will link with the completed Great Parks Phase 1 and relieve pressure on the Cotehele Drive junction, which has very limited capacity.

3.2 This is an important strategic site in terms of new homes and commercial space. Its delivery is important in terms of the Council's 5 year housing land supply. The new junction will facilitate delivery of new jobs and homes. In addition, the new junction is part of overall improvements to the Western Corridor (as per Growing Places bid to LEP)

3.3 The junction improvements are part of the wider improvement plans for the western corridor and will help to reduce journey times, open up development land (including employment space) etc. In addition, the site the new junction will serve as a strategic site, capable of providing hundreds of new homes and commercial space, but the site has remained 'locked' for about 20 years.

3.4 Torbay Council's Spatial Planning department are progressing the implementation of a proposed housing development, Known as Great Parks Phase 2 and an improved junction is required. Torbay Council is progressing the implementation of the junction improvement in advance of the development in order that the developers have confidence to commit investment into the development. **Appendix 2** details to the layout of the junction as approved under the Planning consent.

3.5 Torbay Council will not be constructing the new junction – but the Council is putting measures in place to secure delivery of the new junction and provide developers with more certainty. Our reasonable costs will be reclaimed from a future developer.

3.6 Land will need to be acquired for the purpose of implementing the junction improvement. The acquisition of such land will be progressed by negotiation between the Council and the property owners where possible, however, if such negotiation does not result in successful acquisition of land then the Council will need to acquire the land by Compulsory Purchase Order.

3.7 The delivery of the junction improvements is subject to the acquisition of areas of

private land as detailed on **Appendix 1**. Failure to acquire these areas of land would result in the Scheme not being delivered in its entirety.

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## Supporting Information

### 4. Position

- 4.1 The proposed improvement of the junction of the A380 Kings Ash Road and Spruce Way to create a new access for the proposed housing development, known as Great Parks Phase 2, to the west of Kings Ash Road was considered by the Development Management Committee on 11<sup>th</sup> November 2013, where conditional consent was granted.
- 4.2 The existing junction at Kings Ash Road/Cotehele Drive was originally intended to serve Phases 1 and 2, but there have been subsequent increases in the density of Phase 1 (resulting in more homes than originally envisaged) and Cotehele Drive is now operating close to capacity. The proposed Development within Phase 2 will take the Cotehele Drive junction over its capacity. Consequently a new junction is required in its own right but also as part of the wider Western Corridor improvements
- 4.3 The proposals are vital in securing appropriate access and infrastructure to support the delivery of phase 2 of Great Parks. The site is an important part of the Council's housing land supply and the delivery of the junction will open the site up to development.
- 4.4 Phase 2 is a currently a 'stalled' development. A combination of landownership and market conditions has meant that previous permissions have not been implemented and no comprehensive development has come forward. The Council has however, over the last 3 years, been working with land owners, community and developers to resolve a range of issues and help bring the site forward for development. This work is now close to completion and the site now has a better chance of delivery than at any time in the last 20 years.
- 4.5 The Council has completed a masterplan for the whole of Phase 2. This included community workshops, which confirmed the importance of a new junction to serve the site. The masterplan shows that around 300 homes and 300-500sq mts of commercial space (including a local centre) can be accommodated on site. The masterplan has defined the principles of a high quality development on site and has shown how comprehensive development of the site can be achieved
- 4.6 The development of the site is subject to the agreement of a number of partners including developers and land owners. Due to the complexities of the partnership, Torbay Council has proposed to progress the implementation of the junction and recover its costs as part of the subsequent planning applications. Some of the land required for the scheme is currently in the ownership of the partner land owners, however in order to ensure that all parties have confidence in the development, the Compulsory Purchase Order will need to cover these sections of land in addition to land within properties that are not connected with the partnership but required to facilitate the scheme.
- 4.7 Torbay Council have progressed the detailed design of the proposed junction required to accommodate the additional capacity for the level of housing proposed in the

adjacent development and have submitted the planning application for the highway scheme. There is insufficient land within either Torbay Council ownership or within existing public highway to accommodate a junction of the required size and therefore some acquisition of private land is necessary.

- 4.8 Torbay Council has already entered into negotiations with the land owners who form part of the partnership to the development. Subject to approval of the proposed decision, approaches will be made to the other affected properties.
- 4.9 If negotiations with property owners are not successful in acquiring the required land then the only remaining option is compulsory purchase. Due to the lengthy process involved in making a Compulsory Purchase Order it is necessary to instigate procedures at this stage as failure to acquire land within a reasonable timescale could jeopardise the implementation of the housing development.
- 4.10 The Council as the highway authority has powers under the Highways Act 1980 to acquire compulsorily or by agreement, land required for the improvement of a highway and to acquire compulsorily rights over land for highway purposes.
- 4.11 The proposal raises implications under the Human Rights Act 1998, the First Protocol Article 1 and (where the properties to be included in the proposed Order are residential properties) Article 8 of the Convention.

The First Protocol, Article 1 protects a person's peaceful enjoyment of his possessions (including property). The Article states that no one shall be deprived of his possessions except in the public interest and subject to the conditions provided for by law and by the general principles of international law. However, the provisions do not impair the right of a State to enforce such laws as it deems necessary to control the use of property in accordance with the general interest. The making of a Compulsory Purchase Order (CPO) will interfere with the peaceful enjoyment of property, however, such interference is permitted by law, under the Highways Act 1980 and the Acquisition of Land Act 1981 (which sets out the procedure for making and confirming a CPO). It is considered that the making of the proposed CPO, for the reasons set out in the report, is in the public interest and that the interference with the peaceful enjoyment of property is proportionate having regard to the legitimate aims pursued by the Council in making the proposed CPO.

Article 8 of the Convention states that everyone has the right to respect for his private and family life, his home and his correspondence. There shall be no interference with the exercise of this right except such as 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 prevention of disorder or crime, for the protection of health or morals, or for the protection of the rights and freedoms of others. Where the property to be included in the proposed CPO is a residential property, there will or may be interference with this right, but such interference is in accordance with the law; the Highways Act 1980 and the Acquisition of Land Act 1981. It is considered that the making of the CPO, for the reasons set out in this report, is necessary for public safety, economic well-being, protection of health and for protection of the rights of freedoms of others and that the interference with the right to respect for homes is proportionate having regard to the legitimate aims pursued by the Council in making the CPO.

- 4.12 A CPO may be made by the Council, but must be confirmed by the Secretary of State if there are objections. If objections are made to the Order and not withdrawn, the

Secretary of State is likely to hold a public inquiry before determining whether or not to confirm the Order, in full or in part. That could incur the Council in presently unquantifiable costs. These might be significant, and would need to be recovered from the Development Partnership.

- 4.13 If the Council acquires land under compulsory purchase powers, statutory provisions as to compensation will apply. The Council will be required to pay market value, payment for any injurious affection and in certain circumstances additional costs such as loss payments and disturbance. Again the Council would seek reassurance from the Development Partnership that the value of these payments would be recovered from them if deemed lawful.
- 4.14 A resolution of the Council to make a CPO may enable qualifying persons to serve a blight notice on the Council requiring it to acquire blighted land.
- 4.15 In some cases where the Council proposes to acquire part only of a property, it may be required to purchase the whole unless it can show that part can be taken without material detriment to the whole or without seriously affecting the remaining property's amenity or convenience.
- 4.16 It should also be noted that Torbay Council is currently undertaking an application through the Local Enterprise Partnership for Department for Transport funding to implement a series of improvements along the A380/A3022, known as the 'Western Corridor' and a decision on this is expected later this year. Whilst detailed design on the section between Spruce Way and Churscombe Cross is currently at an early stage, it is likely that some additional land may be required from properties affected by the junction improvement, namely Hilltop Nursery, Mysca, Smallcombe and The Meadows. In order to avoid a future Compulsory Purchase Order being required to progress this scheme and to avoid inconvenience and disruption to the relative property owners it is proposed that in the land negotiations, Torbay Council look to acquire sufficient land for both schemes. It should however be noted that the CPO cannot cover this additional land as the Western Corridor Scheme does not have the required consents and funding at the present time.
- 4.17 There is a resolution to grant planning permission, subject to the completion of a S106 Agreement, on land to the south western corner of Phase 2. The development is for 84 new homes. The development provides an index linked contribution of £262,500, placed in a bond, for improvements to Cotehele Drive and/or a new junction. All development within Phase 2 will make a contribution towards the cost of the new access, unless the access is provided by other means.
- 4.18 The proposed new junction provides for access into Hilltop Nursery and to other existing residential properties. If these sites are redeveloped, then they too will be required to make a financial contribution towards the cost of the new junction.

## **5. Possibilities and Options**

- 5.1 That the proposed decision to acquire land for the Kings Ash Road/Spruce Way Junction improvement as detailed in Section 2 be progressed.
- 5.2 That the approval for making the Compulsory Purchase Order is delayed until after negotiations have taken place.

5.3 That the proposed decision is not progressed.

## **6. Fair Decision Making**

6.1 The junction has been subject to a formal planning process and conditional approval granted by the Development Management committee.

6.2 The implementation of the Great Parks Phase 2 housing development forms part of the Torbay Local Plan, approved as policy by Full Council.

6.3 The implementation of the 'Western Corridor' highway improvements forms part of the current Local Transport Plan, approved as policy by Full Council.

6.4 The Council has completed a masterplan for the whole of Phase 2. This included the involvement of community workshops,

## **7. Public Services (Social Value) Act 2012**

7.1 The Council will not be looking to implement the construction of the improved junction, however the Council is putting measures in place to secure delivery of the new junction and provide developers with more certainty. The Authority's reasonable costs will be reclaimed from a future developer.

## **8. Risks**

8.1 There is a significant risk that negotiations to acquire land for this scheme could fail and a Compulsory Purchase Order would be the only option for progressing the scheme. If the decision to make a Compulsory Purchase Order is delayed until that time then the Council may not be able to deliver the Scheme in the short term. This would have serious implications on the implementation of the housing development.

8.2 If objections are made to the Compulsory Purchase Order, and not withdrawn, the Secretary of State is likely to hold a public inquiry. This may delay the delivery of the scheme and the subsequent housing development.

8.3 If land is not acquired for this Scheme then the highway would have insufficient width to accommodate the additional capacity required to facilitate the housing development.

## **Appendices**

Appendix 1 - Proposed Compulsory Order Plan

Appendix 2 - Proposed Layout of Junction

Appendix 3 – Equality Impact Assessment

## **Additional Information**

Planning Application P/2013/0136

Torbay Local Plan

Torbay Local Transport Plan