



Meeting: Council

Date: 5 February 2015

Wards Affected: Blatchcombe

Report Title: Western Corridor Improvement, Paignton – Spruce Way to Churscombe Cross – Acquisition of Land – Compulsory Purchase Order (Mayoral Decision)

Is the decision a key decision? Yes

When does the decision need to be implemented? March 2015

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1. Purpose and Introduction

- 1.1 To achieve a way forward to ensure that the major highway improvement scheme for the Western Corridor, Paignton is delivered by seeking Members' approval to make a Compulsory Purchase Order for the land required for the section of the scheme between Spruce Way and Churscombe Cross, to enable it to be acquired if agreement cannot be reached by negotiation with the land owners.

2. Proposed Decision

That the Mayor be recommended:

- 2.1 That that Head of Estates use his delegated authority to continue negotiations with the landowners for acquisition of the land required for the Western Corridor scheme 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 Western Corridor Highway Improvement Scheme affecting land adjacent to the A380 Kings Ash Road in accordance with the following:-

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 8/9/14_06 attached as **Appendix 1** for the purpose of highway improvement.

- 2.3 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.
- 2.4 That detailed design and preparation of proposals continue for the highway improvement scheme in order that a scheme can be implemented following acquisition of all required sections of land.

3. Reason for Decision

- 3.1 £7.3m funding has been granted from the Department for Transport (Dft) through the Local Transport Board (LTB) for a series of highway improvements to the A380/A3022 Torbay Ring Road, known as the 'Western Corridor'. The improvements, which form part of the current Local Transport Plan, are now scheduled to be implemented over a three year period from April 2015 to March 2018 and the funding has been granted on the basis that the Torbay Council is in a position to complete the entire scheme within this time period.
- 3.2 The Western Corridor improvements will provide additional capacity to this strategic route and will reduce journey times, open up development land (including employment space) and ensure that the route provides for the associated future growth to the area to the west of Paignton.
- 3.3 For the majority of the proposed improvements there is no requirement for the acquisition of any private land and the schemes do not require planning consent. However, one section of this improvement, to widen the A380 Kings Ash Road between its existing junction with Spruce Way and the Churscombe Cross Roundabout, will require the acquisition of private land.
- 3.4 The section of highway improvement in question will provide additional capacity to this strategic route by adding an additional northbound traffic lane and improved pedestrian and cycle facilities.
- 3.5 Land will need to be acquired for the purpose of implementing the highway 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.

- 3.6 The delivery of the junction improvements is subject to the acquisition of areas of private land as detailed in **Appendix 1**. Failure to acquire these areas of land would result in the Scheme not being delivered in its entirety.
 - 3.7 The approval of the recommendations in this report is sought from the Mayor to seek to ensure delivery of the scheme within the required timescale.
 - 3.8 It should also be noted that part of the proposed improvement is within highway land administered by Devon County Council. Devon are supportive of these improvements, however further consultation will be required with them regarding the implementation of the CPO in their area.
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Supporting Information

4. Position

- 4.1 The proposed improvement of the A380/A3022 Torbay Ring Road, known as the 'Western Corridor' forms part of the current Local Transport plan 2011-2026, approved by Council.
- 4.2 The road forms one of the two strategic routes through Torbay and will require additional capacity to reduce journey times through this route and to open up the potential growth areas to the west of Paignton for residential and commercial development. The improvements are therefore seen as essential to improve the future economy of the area.
- 4.3 The Local Transport Board (LTB) has recently confirmed £7.3m of funding over the three financial years between 2015 and 2018 to cover a series of improvements to both the A380 Kings Ash Road and A3022 Brixham Road. The funding is granted on the basis that the schemes are ready to be progressed and completed within the required timescales. Torbay Council has also been awarded £1,05m of Department for Transport (DFT) 'Pinch Point' funding for the current financial year and this will ensure that the schemes are well progressed before this time.
- 4.4 Torbay Council's Spatial Planning Department has confirmed that Planning consent is not required, as the proposed highways widening scheme would qualify as a permitted development under Part 13 – Development by Local Highways Authorities, Class A of the General Permitted Development Order.

As part of the scheme is however within land under the administration of South Hams District Council, as planning authority, confirmation has been sought from them to ensure that they concur with this advice.
- 4.5 For the majority of the Western Corridor Improvements there is no requirement to acquire any additional private land and will therefore be implemented within existing highway land. This ensures that the authority will be in a position to commence

sections on the schemes from the start of the timescale in April. One proposed section of widening of the A380 between the junction of Spruce Way/Kings Ash Road and the Churscombe Cross Roundabout will however require some private land to be acquired for highway widening.

- 4.6 The section of scheme in question is currently planned to be constructed in years 2 and 3 of the programme, however in order to ensure that the acquisition of land does not present a risk to the successful completion of the scheme, authority will need to be granted to officers to progress a CPO at this early stage due to the likely timescales that may be involved with the CPO process.
- 4.7 Torbay Council have progressed the detailed design of the highway widening scheme and this has confirmed that there is insufficient land within either Torbay Council ownership or within existing public highway to accommodate the required scheme.
- 4.8 Torbay Council is currently entering into negotiations with the land owners where land acquisition is required with a view to securing the purchase of land required for highway widening.
- 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 would result in failure to deliver to scheme in its entirety.
- 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, but may be considered small compared with the overall cost of the scheme.
- 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 Home Loss payments and disturbance.
- 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 be noted that a report was presented to Council in February 2014 in respect of a proposed CPO for a proposed junction improvement to the junction of Spruce Way and Kings Ash Road to form a new access into a future development to land to the west of the junction for the next phase of the 'Great Parks' housing development. This Order has not been progressed to date due to a delay in progress from the developers. Some of the land identified within that order is also included within the required land for the scheme detailed within this report, however members will need to consider these schemes as entirely separate for the purpose of granting authority to progress the order, as a CPO must only include land that is specifically required for a scheme which has both the necessary approvals and funding in place, which the previously considered junction improvement currently does not have.

- 4.17 Part of the scheme to which the proposed CPO will apply is within the area administered by Devon County Council (DCC) as highway authority. DCC are aware of the widening scheme and are supportive of it, as it forms part of the Local Transport Plan, which was prepared jointly with them. DCC will however need to be consulted further on the CPO issue to ensure that they have met all the necessary requirements from their standing orders to adopt the widened highway areas within their administration into their adopted highway network following completion.

5. Possibilities and Options

- 5.1 That the proposed decision to acquire land for the Western Corridor Highway 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 implementation of the 'Western Corridor' highway improvements forms part of the current Local Transport Plan, approved as policy by Council.
- 6.2 The Local Transport Plan was prepared in consultation with all major stakeholders.
- 6.3 The Local Transport Plan was prepared jointly with Devon County Council.
- 6.4 The funding for the scheme has been approved by the Local Transport Board, as part of the Local Enterprise Partnership following the submission of a sound business case for the scheme.

7. Public Services (Social Value) Act 2012

- 7.1 The Torbay Development Agency will provide support to Torbay Council for the negotiation and valuation for private land to be acquired in liaison with the authority's legal officers.
- 7.2 The management and delivery of the scheme will be carried out by officers from the Council's Streetscene Services Group.
- 7.3 The detailed design and supervision of the scheme will be carried out by the Council's Engineering Services Team.
- 7.4 Accommodation works to properties where land has been acquired will be carried out under the contract for the main highway widening works, which will be procured as a formal contract under a current approved framework.

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 within the required timescale. This would have serious implications on the implementation of the Western Corridor Improvement in its entirety.
- 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.
- 8.3 If land is not acquired for this Scheme then the existing highway would have insufficient width to deliver a scheme which would meet the requirements for the DfT funding.

Appendices

Appendix 1 – Proposed Compulsory Purchase Order Plan

Additional Information

Torbay Local Transport Plan 2011-2026

<http://www.torbay.gov.uk/index/your services/transportandstreets/transportpolicy/transportplan.htm>

Application to Local Transport Board for Western Corridor

<http://www.torbay.gov.uk/index/your services/transportandstreets/transportpolicy/localtransportboard/westerncorridorltb.htm>

Report to Full Council 6th February 2014 – Kings Ash Road/Spruce Way Junction Improvement, Paignton – Compulsory Purchase Order.