

CHESHIRE EAST COUNCIL

Cabinet

Date of Meeting:	20 th August 2012
Report of:	Strategic Director Places & Organisational Capacity and Borough Solicitor
Subject/Title:	Compulsory purchase of Land to Facilitate the Crewe Green Link Road South
Portfolio Holder:	Councillor Jamie Macrae

1.0 Report Summary

- 1.1.1 The purpose of this report is to recommend the Cabinet formally resolve to use the Council's Compulsory Purchase powers to enable the acquisition of land to facilitate the Crewe Green Link Road South and to secure funding for the scheme from the Department for Transport (DfT)
- 1.1.2 This report is an update of a similar report approved by Cabinet in July 2011. This report is necessary to re-confirm the council's position in respect of compulsory purchase powers as further detailed design work has refined the land necessary to deliver the scheme.

2.0 Decision Requested

- 2.1 To approve the use of the Council's Compulsory Purchase Powers to undertake the acquisition of land required for the scheme between the A500 roundabout and the A5020 Weston Gate roundabout.
- 2.2 An Order being made under Sections 239, 240, 246, 250, 260 and 327 of the Highways Act 1980 and all other powers as appropriate for the compulsory purchase of land and rights required for the construction of Crewe Green Link Road South as shown on drawing No: B1772401/CPO/001 (Rev.1) or with such amendments to final plot boundaries as approved by the Strategic Director Places & Organisational Capacity.
- 2.3 The order be submitted to the Secretary of State for confirmation
- 2.4 That the Borough Solicitor and Strategic Director Places and Organisational Capacity be authorised to take all appropriate actions in this matter including:-
 - 2.4.1 To take all necessary action to secure the making and confirmation and implementation of the Order including the publication and service of all relevant notices and the presentation of the Council's case at any public inquiry and subsequent service of Notices to Treat and Notices of Entry or at their discretion the execution of General Vesting Declarations as the case may be if the Order is confirmed; and

- 2.4.2 To negotiate to acquire all interests in the land and new rights within the Order and rights and interests affected by the Order either by agreement or compulsorily including prior to the making of the Order and where appropriate to agree terms for relocation.
- 2.4.3 To approve agreements and undertakings with the owners of any interest in the Order and any objectors to the confirmation of the Order setting out the terms for the withdrawal of objections to the Order, including where appropriate; seeking inclusion in and/or exclusion from the Order of land or new rights; and
- 2.4.4 In the event that the question of compensation be referred to the Upper Tribunal (Lands Chamber) to take all necessary steps in relation thereto including advising on the appropriate compensation payable and
- 2.4.5 To appoint appropriate consultants if necessary to assist and advise in regard to the above
- 2.5. Note that in the meantime continuing efforts are being made to acquire the land by agreement to enable the Crewe Green Link Road to be progressed

3.0 Reasons for Recommendations

- 3.1 The acquisition of this land enables the Council to proceed with the development and delivery of the Crewe Green Link Road (South). This is a vital new road connection as it provides a key strategic transport link to relieve congestion, safety and air quality issues in Crewe and provides access to the Basford East Regional Investment Site and an alternative route to Crewe Railway Station.
- 3.2 The completion of this road supports one of the Council's key priorities; Crewe Vision.
- 3.3 The land required to deliver this scheme is owned by the following parties:
 - A) The Duchy of Lancaster
 - B) Network Rail
 - C) Private individual (Mr & Mrs Whitby)
 - D) Co-operative Plc - *Developer land*
 - E) Private individual (Mr Witter) *Developer land*.
- 3.4 The Duchy of Lancaster generally has Crown Immunity from compulsory purchase legislation and so an acquisition by agreement is vital to deliver the scheme. Other landowners detailed in 3.3 have no such immunity from CPO legislation.
- 3.5 In recognition of their unique position, On the 1st November 2010 the Cabinet Member for Procurement, Assets and Shared Services resolved that *the land located off Weston Gate Roundabout in Crewe, as referred to in the report, be acquired from the Duchy of Lancaster on terms and conditions to be determined by the Head of Regeneration, Assets Manager*

and Borough Solicitor. A formal option agreement was entered into in November 2011 for a four year period.

- 3.6 Discussions with other land owners, Mr Whitby and Network Rail have been on-going since November 2009. Progress has been made with Network Rail and on the 16th January 2012 the Portfolio Holder for Prosperity agreed to the negotiated heads of terms. Work is now underway to exchange legal contracts on that basis and the target date for completion is September 2012. Discussions with Mr Whitby are still ongoing.
- 3.7 Discussions with the two developers have indicated their willingness to cede the land required for the road to the highway authority for a peppercorn transaction reflecting the potential development opportunity the road brings. However, in order to be able to demonstrate that all necessary land can be assembled for the scheme delivery, and as at this stage no formal agreement to this effect has been reached, it is considered prudent at this stage to include the developers land in the formal CPO action.
- 3.8 In addition to facilitating the eventual delivery of this scheme, initiating the CPO process over the entire land holding that is required to implement that scheme offers a 'security' and 'backstop' position in evidencing the deliverability of this scheme to the DfT
- 3.9 The Council has the requisite powers under Sections 239, 240, 246, 250,260 and 327 of the Highways Act 1980 for the compulsory purchase of land and rights required. The principal power in the act is Section 239(1), which provides that a highway authority may acquire land required for the construction of a highway which is to be a highway maintainable at the public expense and Section 239(3) which allows a highway authority to acquire land for the improvement of a highway being an improvement which the authority is authorized to make under the Act. Reliance must also be placed on the other sections of the Highways Act 1980 in the circumstances of this case.
- 3.10 The powers of compulsory purchase contained in the Highways Act 1980 are subject to the distance limits set out in Section 249 and Schedule 18 of the Act
- 3.11 In considering whether to confirm a CPO the Secretary of State will need to be convinced that there is an compelling case in the public interest for compulsory acquisition as the use of such powers are to be considered a matter of last resort. Members should reach a similar decision before authorising its making on the balance of the information contained in this report.
- 3.12 In particular members will have consideration to the issues set out in this section of the report, the policy implications set out in Section 6 and the legal implications in Section 8.

3.13 If members are satisfied that compulsory powers are necessary on the facts then they are entitled to authorize the making of a Compulsory Purchase Order

4.0 Wards Affected

4.1 Haslington and Crewe East

5.0 Local Ward Members

5.1 Cllr John Hammond, Cllr David Marren, Cllr Margaret Martin, Cllr David Newton, Cllr Chris Thorley

6.0 Policy Implications including - Carbon reduction - Health

6.1 The completion of Crewe Green Link Road will provide traffic relief to one of the busiest road corridors in the Borough, the A534 in Crewe. This relief will:

- Reduce congestion and therefore carbon from transport use benefiting climate change
- Reduce vehicular exhaust emissions in an air quality management area, therefore benefiting health
- Make walking and cycling more attractive supporting wider health benefits from physical activity

The completion of Crewe Green Link Road is a fundamental part of delivering the council's Local Plan aspirations for Crewe.

7.0 Financial Implications (Authorised by the Borough Treasurer)

7.1 It is very difficult to estimate the costs associated with the CPO process due to the number of third party variables over which the Council has no control. On the basis that there is likely to be a Public Inquiry, costs are likely to range between £75,000 and £150,000. This estimate of costs would cover surveyors /solicitors / barristers / land referencers fees but does not cover any references to the Lands Tribunal in respect of compensation. The lower cost estimate assumes that elements of the CPO process are undertaken in-house.

7.2 The costs for preparation of the CPO in the 2012/13 financial year can be met through the LTP resources already approved for this scheme. An allocation for professional fees was included in the funding package submitted to the DfT which was approved in principle in September 2011. However, should the 'Final Approval' bid be unsuccessful the council would be liable for meeting any sunk costs from its own funding.

7.3 The actual costs for the land acquisition / compensation costs whether through the CPO process or by negotiation will be included in the overall funding bid for the Crewe Green Link Road Scheme.

8.0 Legal Implications (Authorised by the Borough Solicitor)

- 8.1 The Council should use a specific power of compulsory purchase where available rather than a more general power. It is possible that the Council could use those powers contained in the Town & Country Planning Act 1990 in respect of the general economic well being of the area but, as this is a highways issue, the Highways Act powers are appropriate.
- 8.2 It has been pointed out that the use of compulsory purchase powers should be considered as a matter of last resort and that a compelling case in the public interest must be made out. Members are advised that acquisition by negotiation should continue and that the making of a resolution or indeed the CPO itself does not require that these be discontinued. Circular 06/2004 states:
- “Before embarking on compulsory purchase and throughout the preparation and procedural stages, an acquiring authority should seek to acquire land by negotiation wherever practicable. The compulsory purchase of land is intended as a last resort in the event that attempts to acquire by agreement fail. Acquiring authorities should nevertheless consider at what point the land they are seeking to acquire will be needed and, as a contingency measure, should plan a compulsory purchase timetable at the same time as conducting negotiations. Given the time which needs to be allowed to complete the compulsory purchase process, it may be often sensible for the acquiring authority to initiate the formal procedures in parallel with such negotiations”
- It is therefore legally correct (subject to other issues) to authorise a CPO while negotiations are proceeding.
- 8.3. Members will need to be assured that there are no planning, financial, legal or physical impediments to the scheme. A planning application for the scheme was approved in August 2011. A further application will be submitted later this year to resolve outstanding environmental and construction issues.
- 8.4. There is a reasonable expectation of funding from the DfT (60% of the cost) with the scheme achieving programme entry in late 2011. A further submission to the DfT ('final approval') will have to be made when the council is in a position to deliver the scheme – this will include having a contractor on board and having the means to acquire the necessary land. This submission is currently anticipated to be made in January 2014.
- 8.5. The residual funding for the scheme is expected to come from a cocktail of developer funding and council contributions. The basis of the funding bid was detailed in a report to Cabinet on the 1st August 2011. A further report to Cabinet will be taken in due course explaining the full financial situation and any requirement for council funding prior to making the DfT submission for final approval.
- 8.6. Members will need to consider the Human Rights Act and Article 1 of the First Protocol to the European Convention on Human Rights. Although there are apparently no domestic dwellings within the proposed CPO land, Article 8 should also be considered.

- 8.7. Article 1 protects the rights of everyone to the peaceful enjoyment of their possessions. No person can be deprived of their possession except in the public interest and subject to the relevant national and international law.
- 8.8. Article 8 protects private and family life, the home and correspondence. No public authority can interfere with this interest except if it is in accordance with the law and is necessary in the interests of national security, public safety or the economic well-being of the county
- 8.9. In considering the above Articles it should be noted that where such landowners as set out in 3.4 above may wish to carry out development of their land then the road will assist them in that regard, subject to any planning policies on any individual application, and they will be compensated for any land acquired under the CPO
- 8.10 Members will need balance whether the powers it is recommended are compatible with the European Convention on Human Rights. In weighing up the issues as set out in this report it may conclude that there is a compelling case in the public interest for the acquisition of land which will bring benefits to the residents and businesses of Crewe that could not be achieved by agreement and this outweighs the loss that will be suffered by existing landowners. The CPO will follow existing legislative procedures. All parties have the right to object to the CPO and attend a public inquiry arranged by the Secretary of State. Parties not included in the CPO may be afforded that right if the inquiry inspector agrees. The decision of the Secretary of State can be challenged by way of proceedings, following judicial review procedures. Those whose land is acquired will receive compensation based on the CPO compensation code principles and should the quantum of compensation be at dispute the matter can be referred to the Lands Tribunal for determination. The Courts have held that this framework complies with the Convention and as such a decision to proceed with the recommendation is compatible with the Human Rights Act

9.0 Risk Management

- 9.1 Entering into the CPO process offers the 'security' that the Dft require to ensure a successful 'Final Approval' for the scheme. Negotiations will continue in parallel to CPO proceedings to ensure that where possible agreement is reached by private treaty outside of the CPO process.
- 9.2 Progressing a CPO would only occur after allowing an opportunity for any final negotiations. Ultimately however, the making of a CPO could be the only way to resolve the major area of uncertainty that could otherwise delay the proposed project programme.
- 9.3 The project programme key dates demonstrate that the scheme can be delivered even assuming the CPO process is necessary.
- 9.4 The council can notify the Secretary of State that it is no longer wishes to use its CPO powers in respect of any interest and request the Secretary of State

not to confirm the CPO over those interests at any time if negotiations are successful or if the council considers the financial risks to be too great.

10.0 Background and Options

- 10.1 Negotiations have taken place with the landowners who have interests along the route of the Crewe Green Link Road by the former Cheshire County Council for nearly 10 years. Previously negotiations had taken place with the requisite land owners, the Duchy of Lancaster, Network Rail and Mr Whitby to reach a collective agreement but this was unsuccessful.
- 10.2 A decision was taken recently to resume negotiations but to proceed with each party on an individual basis. Negotiations with the Duchy of Lancaster & Network Rail have been successful.
- 10.3 Negotiations with Mr Whitby, though continuing, have thus far failed to reach an acceptable agreement.
- 10.4 The DfT operates a 'two stage' approval process for funding -
 - A) Programme Entry – award of funding 'subject to completion of statutory procedures and firm scheme costs'
 - B) Final Approval – award of monies.
- 10.5 Though negotiations will continue with Mr Whitby and Network Rail it is considered that having the option to exercise a CPO should negotiations fail will be a crucial component in accessing DfT funding (through the Final approval bid') The same consideration must also be given to the two Basford East developers.
- 10.6 CPO processes can be extremely lengthy. In this instance advice has been received suggesting the process could take up to twenty months. In this regard, the current programme demonstrates that in the event that land acquisition is via the CPO route, the council must commence proceedings immediately.

11.0 Access to Information

The background papers relating to this report can be inspected by contacting the report writer:

Name: Paul Griffiths
Designation: Principal Transport Officer
Tel No: 01270 686353
Email: paul.griffiths@cheshireeast.gov.uk