

# CHESHIRE EAST COUNCIL

## Cabinet Member for Prosperity and Economic Regeneration

---

**Date of Meeting:** 5<sup>th</sup> March 2013  
**Report of:** Head of Highways and Transport  
**Subject/Title:** Crewe Green Link Road (South) - Great Crested Newt Mitigation Habitat Lease Agreement, and Construction and Establishment  
**Portfolio Holder:** Councillor Jamie Macrae

---

### 1 Report Summary

- 1.1 This report seeks approval to enter into a short term Licence / Lease Agreement with a landowner in order to access land (2 sites) to construct and establish Great Crested Newt habitats, including construction of ponds, to mitigate for loss of natural habitat due to the (proposed) construction of Crewe Green Link Road (South).
- 1.2 It is important to note that the approval sought does not include the translocation of any newts. This activity will be undertaken as advance mitigation works to the main highway construction works and will only be commenced once a long term agreement to secure the habitat areas in perpetuity has been put in place.
- 1.3 The following supporting information is included as appendices to this report:
- Plan 1 – GCN Mitigation Area South Location Plan (Coop)
  - Plan 2 - GCN Mitigation Area North Location Plan (Witter)

### 2 Recommendations

- 2.1 That the Council enter into two formal short term (2 year) licence / lease agreements with two separate landowners (Coop, see plan1 attached and Witter, see plan 2 attached) to enable the Council to access land to construct and establish mitigation habitat areas necessary to mitigate for loss of Great Crested Newt habitat due to the construction of Crewe Green Link Road (South).
- 2.2 The licence / lease be for 2 years or until such time as it is superseded by a subsequent long term arrangement to protect the areas in perpetuity (either by a lease of 150 years minimum term or a freehold transfer to the Council), after which time the newt relocation will be undertaken.
- 2.3 That the construction of the ponds and habitat be undertaken by the Council's Highway service provider to the specification as set out in the planning permissions 12/3804N and 12/3805N.

- 2.4 That the terms and conditions of the lease agreement and the contract for the construction of the habitat areas and any ancillary agreements necessary be delegated to the Assets Manager and Borough Solicitor in consultation with the Head of Highways and Transport.

### **3 Reasons for Recommendations**

- 3.1 The construction and establishment of the Great Crested Newt mitigation habitat areas in advance of the main construction works is essential to the timely delivery of Crewe Green Link Road (South).
- 3.2 It is crucial that construction of planting of ponds is undertaken in March 2013 in order to give these areas sufficient time to establish such that they will be ready to accept translocated newts in early 2014, in advance of the main construction works.
- 3.3 In addition to a programme saving, there is a financial saving in the region of £0.5M in terms of the inflationary cost in delivering the main scheme approximately 6-8 months early.
- 3.4 There is a risk that if these works are not undertaken in advance the delivery of the Crewe Green Link Road (South) scheme would be delayed sufficiently to jeopardise the agreed delivery schedule with the main funder (Department for Transport (DfT))
- 3.5 The scope and value of the works falls within the remit and contract of the highway services contract awarded to Ringway-Jacobs (Cheshire East Highways)
- 3.6 The actual heads of terms and conditions of the proposed short term licence / lease and contract for construction of the habitat areas is still being negotiated with the landowners, but are expected to be agreed by early March 2013.
- 3.7 In summary, the draft heads of terms propose a lease or licence agreement with a minimum term of 2 years or until a long term agreement for land use is in place. The Council can access the land to construct and establish GCN habitat areas in accordance with NE specifications and requirements, and takes responsibility for repair and maintenance of land and erecting and maintaining boundary structures, and all costs/charges relating to the land, including rent/licence fee, and compensation to the landowner / tenant for lost income. The Council is to insure against public liability and indemnify both landowners, and the Council is to pay its own and both landowners professional fees for the licence/lease.

### **4 Wards Affected**

- 4.1 Haslington

## **5 Local Ward Members**

- 5.1 Cllrs John Hammond and David Marren

## **6 Policy Implications (including carbon reduction and health)**

- 6.1 The investment accords with the Local Transport Plan Implementation Plan (2011-2015) policy B2 – Enabling development
- 6.2 This decision will contribute towards the delivery of Crewe Green Link Road (South) which will have a beneficial effect on congestion, road safety, accessibility and reduction of carbon emissions over the urban Crewe highway network.

## **7 Financial Implications (authorised by Director of Finance and Business Services)**

- 7.1 The estimated cost for the construction of the newt habitat and ponds is not expected to exceed £190,000
- 7.2 Negotiations are continuing with the two landowners on the financial details of the short term licence/lease and the compensation costs to existing tenants, in addition to this the Council has agreed to meet the reasonable surveyor's and legal costs of the 2 landowners to a maximum sum of £6,000.00 plus VAT (£1,500.00 plus VAT per professional fee). It is expected that these costs, in total and for both areas, will not exceed £20,000.
- 7.3 Sufficient budget provision is available to cover the costs of this licence / lease agreement and construction contract in the 2013/14 financial year.
- 7.4 In the unlikely event that the scheme does not progress through to construction and does not receive DfT funding contribution the Council would be liable for the costs associated with the construction, establishment and reinstatement of these habitat areas. As a guide this cost is anticipated to be in the range of £100,000 - £150,000. The cost for this, should it be incurred, would have to be met from the LTP programme allocation.
- 7.5 The construction costs of the ponds and establishment of habitat will ultimately be considered as part of the final out-turns cost of the link road. The funding for this is as advised in previous Cabinet reports and will include a 60% contribution to the scheme costs from the DfT.

## **8 Legal Implications (authorised by Borough Solicitor)**

- 8.1 The Council will be taking a licence/lease from the Co-Op (or its predecessor landowner) and Mr Witter for the purpose of carrying out the works outlined in this report.
- 8.2 The Council has the power under The Local Government Act 1972 section 120 to acquire land by agreement, which includes either a purchase or a lease. If the

Council enter into a licence in respect of the land this will not form an acquisition, merely a permission to be on the land and complete the agreed works.

## **9 Risk Management Implications**

- 9.1 If the Council enter into a licence agreement with the landowners this does not afford any security of tenure to the Council, it is merely permission to enter onto the land and complete the works. In the event that the landowner seeks the return of its land prior to its acquisition by the Council, the Council would have to provide this and would therefore lose the money already spent and incur costs in returning the land to its former state.
- 9.2 If the Council take a lease of the 2 parcels of land (which is within the Landlord and Tenant Act 1954) the Council's occupation will be more secure than in the case of a licence and the landowners would need to comply with the terms of the Landlord and Tenant Act 1954 in order to take the land back prior to termination of the lease.
- 9.3 In the unlikely event that Crewe Green Link Road South does not proceed to construction, these habitat areas would be reinstated to their former condition and returned to the landowner. The licence/lease would come to an end.
  - 9.3.1 In this event the cost of undertaking the works, including reinstatement, would be borne by the Council. The estimated total cost of construction, establishment and reinstatement, including professional fees and compensation costs, for both areas is £310,000 to £360,000. As noted in 7.4 this cost would need to be met from the LTP programme allocation.
  - 9.3.2 Conversely if the road scheme proceeds as planned the cost of this work would be partly recovered via the DfT funding commitment.
- 9.4 The programme for construction of the main scheme revolves around Network Rail possessions. Early access and construction of these habitat areas is essential to give the areas sufficient time to establish to permit translocation of newts and achieve the current Start of Works date. Delay to the Start of Works would likely result in missed main rail possessions, adding an estimated 6 months (min) to the programme and could put the 60% DfT funding at risk.
- 9.5 The mitigation proposals have been prepared by suitably qualified ecologists and are supported in principle through the environmental statement prepared for the Crewe Green Link Road (South) scheme and as accepted during the recent award of planning permission.
- 9.6 Natural England have yet to formally award the necessary European Protected Species Licences and there is a risk that should this approval not be forthcoming then further modification to the habitat areas would be required.
- 9.7 To mitigate against this the Council have commenced a formal 'pre application screening process' with Natural England. This is expected to be completed by the end of March and if necessary and advice received will be incorporated into the habitat areas.

## **10 Background and Options**

- 10.1 The construction of the proposed Crewe Green Link Road South will result in the loss of natural great crested newt habitat area which in accordance with protected species guidelines must be mitigated by the provision of suitable alternative habitat. This is also a condition of our planning permission for the road (Condition 17, Planning Decision reference 12/4115N).
- 10.2 In general terms, there are two separate populations of great crested newt that are affected by the scheme, which means that two separate replacement habitat areas must be provided. The Council have identified two areas which are considered to be suitable, subject to construction of ponds and appropriate planting, and the principal and specification has been designed in accordance with Natural England guidelines and then agreed through the planning process (refer to planning consents 12/3804N and 12/3805N).
- 10.3 The two areas have been included in the Compulsory Purchase Order in respect of the proposed Crewe Green Link Road South in the event that acquisition of the land by agreement between the Council and the landowners cannot be achieved following the works required to provide the alternative habitat.

## **11 Access to Information**

- 11.1 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](mailto:paul.griffiths@cheshireeast.gov.uk)