

## **Highways and Transport Committee**

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**Date of Meeting:** 21 September 2021

**Report Title:** Middlewich Eastern Bypass

**Report of:** CLT Lead Officer: David Brown, Director of Governance and Compliance

**Report Reference No:** HT/36/21-22

**Ward(s) Affected:** Middlewich and Brereton

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### **1. Executive Summary**

- 1.1.** The Middlewich Eastern Bypass (“the Scheme”) will deliver an improved highway network for Middlewich to relieve congestion in Middlewich town centre. The Scheme also supports economic growth and housing delivery in the town and the surrounding area.
- 1.2.** Authorisation was sought from the Cabinet on the 7 July 2020 to proceed with the making of a Compulsory Purchase Order (“CPO”) and Side Roads Order (“SRO”) (which are referred to together as “the Orders”) to enable the Scheme to be built, Cabinet resolved to progress both Orders.
- 1.3.** This Report seeks authorisation to withdraw:
- 1.4.** (a) the sealed and made Compulsory Purchase Order known as “The Cheshire East Council (Middlewich Eastern Bypass) Compulsory Purchase Order 2021” and;
- 1.5.** (b) the sealed and made Side Roads Order known as “The Cheshire East Council Middlewich Eastern Bypass) (Classified Road) (Side Roads) Order 2021”

Both made on 18 June 2021 and to appropriately inform all affected landowners (as named in the schedule to the CPO and as notified of the SRO), Statutory Undertakers and the National Casework Team of the Department for Transport.

- 1.6.** The CPO is required to enable land and any other interest in the land not within the ownership or control of the Council to be acquired to allow the Scheme to be built. The SRO will enable work to be carried out on existing highways and to alter private means of access to adjacent premises to enable the Scheme to be built. A Bridge Scheme authorises a bridge to be constructed over a navigable waterway.
- 1.7.** During this process the Council has been aided and supported by additional resources from other organisations. The Council has reviewed the use of external advisers and additional information has now updated the Council's position.
- 1.8.** The Committee is advised that the Council should not proceed with the current Orders as authorised by the Cabinet in July 2020. The Orders as they are currently drafted do not achieve the ambitions of the Council in being able to bring this Scheme forwards to enable construction to commence. The changes required cannot be rectified by requesting modifications to be made to the Orders by the Secretary of State for Transport.
- 1.9.** The current Orders were made on 18 June 2021 and were published shortly afterwards in both the local and national newspapers, and time was allowed for objections to be submitted to the National Casework Team at the Department for Transport. Both Orders had different objection periods; the CPO ending on 9 August 2021 and the SRO ending on 13 September 2021. During this time, 11 objections were received, 6 for the CPO and 1 for the SRO and 4 against both Orders.
- 1.10** The current orders will need to be withdrawn and new orders made.

- 1.11** The National Casework Team of the Department for Transport will notify all objectors to the current Orders that these Orders have been formally withdrawn. In due course, a new CPO, SRO and Bridge Scheme will be sealed, made, and submitted for confirmation and all parties wishing to do so will have the opportunity to make representations to those orders, including those parties from whom objections have already been received.

## **2. Recommendations**

### **2.1. That the Committee:**

#### **2.1.1 Authorises the Director of Governance and Compliance to withdraw.**

(a) the sealed and made Compulsory Purchase Order known as “The Cheshire East Council (Middlewich Eastern Bypass) Compulsory Purchase Order 2021” and,

(b) the sealed and made Side Roads Order known as “The Cheshire East Council Middlewich Eastern Bypass) (Classified Road) (Side Roads) Order 2021”.

both made on 18 June 2021

#### **2.1.2 Authorises the Director of Governance and Compliance to undertake all necessary and appropriate notification processes to inform all affected landowners (as named in the schedule to the CPO and as notified of the SRO), Statutory Undertakers and the National Casework Team at the Department for Transport of the formal withdrawal of the Orders.**

#### **2.1.3 Note that a further report to consider new/replacement orders will be provided to the committee as soon as reasonably practicable.**

## **3. Reasons for Recommendations**

**3.1.** The CPO and SRO do not achieve the Council's aim of securing the development of the Middlewich Eastern bypass.

**3.2.** The Orders as currently before the Secretary of State for Transport are not capable of rectification or being confirmed.

- 3.3.** The withdrawal of both Orders is required to enable a new Compulsory Purchase Order, Side Roads Order and Bridge Scheme to be made.

#### **4. Other Options Considered**

**4.1.** Do nothing

If the decision is made to “do nothing”, the legal Orders as drafted do not allow the Council to construct the Scheme as originally planned. The Orders require amendments, which may not be achieved by alteration of the current Orders and the Scheme cannot proceed and be delivered.

**4.2.** Cancel the Scheme

If a decision is made to cancel the Scheme, the benefits derived from the Scheme will not be delivered.

#### **5. Background**

- 5.1.** The Council has set out a clear vision and strategy for sustainable economic growth in the recently adopted Local Plan. A key element of this strategy is a significant investment programme in transport to support housing and jobs in the Borough.
- 5.2.** The Scheme will deliver an improved highway network for Middlewich to relieve congestion in Middlewich town centre. The Scheme also supports economic growth and housing delivery in the town and the surrounding area.
- 5.3.** In order enable the full delivery of the Scheme, the Council was required to make a CPO and SRO and authorisation in this regard was sought from Cabinet on 7 July 2020 to progress the making of the Orders.
- 5.4.** The CPO is required to enable land and any other interest in the land not within the ownership or control of the Council to be acquired to allow the Scheme to be built. The SRO will enable work to be carried out on existing highways and to alter private means of access of adjacent premises to enable the Scheme to be built.

- 5.5.** The Orders were made on 18 June 2021 and were published shortly afterwards in both the local and national newspapers and allowed for objections to be submitted to the National Casework Team at the Department for Transport. Both Orders had different objection periods: the CPO ending on 9 August 2021 and the SRO ending on the 13 September 2021. During this time 11 objections were received: 6 for the CPO and 1 for the SRO and 4 against both Orders.
- 5.6.** It is now clear the Orders do not contain all the required permissions needed. Unfortunately, this cannot be rectified by requesting modifications to be made to the Orders by the Secretary of State for Transport.
- 5.7.** The Scheme currently includes two overbridges, one over the active Sandbach to Northwich Railway line and one over the Trent and Mersey Canal which is a navigable waterway. Where a bridge is to be constructed over a navigable waterway, it should be authorised by a specific Bridge Scheme pursuant to S106 Highways Act 1980 (as amended) to ensure that there is no impact on the navigation rights of the users. The Orders do not include such a Bridge Scheme.
- 5.8.** The additional clarification required in the Orders are of a technical and legal nature but can be summarised as:
- The SRO- technical and legal amendments to the text of the Order to reflect the aspirations of the Scheme.
  - The SRO Schedules need to be amended to include revised descriptions of the locations of highways and private means of access affected by the Scheme.
  - The SRO- to update the private means of access affected by the Schemes proposals, which are required to be stopped up under the SRO and will require new private means of access to be re-provided in alternative locations.
  - The SRO plans require amendment to take into account of the above, and to ensure that it corresponds with the text of the SRO.
  - The CPO to be revised to include additional statutory powers that

the Council is seeking to rely upon to make the CPO.

- The CPO and relevant authority updated to reflect the geographical implication as it affects the neighbouring authority of Cheshire West and Chester. The Council has entered into an agreement under section 8 of the Highways Act 1980 with that Authority to ensure that Cheshire East Council can exercise highway functions within the specified land within the Cheshire West and Chester area.
- To include powers under section 260 of the Highways Act 1980, which is utilised where the Council has acquired land by agreement.
- The CPO updated to clarify the highway Scheme purpose.
- The CPO- alterations to the Schedule to better align the descriptions of the plots affected with the use of the relevant statutory powers.
- The CPO updated to include additional small sections of land that are required on a temporary basis as working space.
- The CPO to include authority for the use of the Mining Code.
- The CPO to be updated to reflect the current landowners affected by the Scheme.
- Inclusion of a Bridge Scheme.
- Authority for the making of a Bridge Scheme pursuant to S106 Highways Act 1980 (as amended) to construct a bridge across the Trent and Mersey Canal, being a navigable waterway.

**5.9.** The CPO and SRO as made are currently flawed and the omission of a Bridge Scheme from the statutory documentation is an impediment to the Scheme. The Orders as currently before the Secretary of State for Transport are incapable of being confirmed. This necessitates the withdrawal of both Orders to enable a new Compulsory Purchase Order, Side Roads Order and Bridge Scheme to be drafted as comprehensively and expeditiously as possible to enable the full delivery of the Scheme without impediment. It is expected that the new documentation will be available to be considered by the Committee in October 2021.

## **6. Implications**

### **6.1. Legal**

**6.1.1.** The Council is the Local Highways Authority (the “LHA”) for the area in which the Order Land is situated. By virtue of Sections 239, 240, 246, 250 and 260 of the Highways Act 1980 (as amended) and Section 3, Parts II and III of Schedule 2 and Schedule 3 to the Acquisition of Land Act 1981, the Council has the power to acquire compulsorily any land in its area for highway purposes.

**6.1.2.** Part XII of the Highways Act 1980 includes several CPO powers to support the delivery of highways. These include the following:

6.1.2.1. Section 239 of the 1980 Act pursuant to which the highway authority for the area may acquire land required for the construction of a highway, other than a trunk road, which is to become maintainable at the public expense, as well as any land required for the improvement of a highway.

6.1.2.2. Section 240 of the 1980 Act, pursuant to which the highway authority may acquire land required for use in connection with construction or improvement of a highway and the carrying out of a diversion or other works to watercourses.

6.1.2.3. Section 246 of the 1980 Act pursuant to which the highway authority can acquire land for the purpose of mitigating any adverse effect which the existence or use of a highway constructed or improved by them has or will have on the surroundings of the highway.

6.1.2.4. Section 250 of the 1980 Act allows the highway authority to acquire rights over land, both by acquisition of those that are already in existence, and by the creation of new rights.

6.1.2.5. Section 260 authorises the clearance of the title to land already held by the Council and required for the scheme and which

might otherwise interfere with the Council's activities in exercising its statutory powers to construct the works.

- 6.1.3.** Section 3 and Parts II and III of Schedule 2 to the Acquisition of Land Act 1981 provide for the inclusion of what is commonly referred to as the Mining Code. This excludes from the land to be acquired workable mines and minerals and adopts a notification procedure for any beneficiary of such mines and mineral rights who may wish to work them at a future date. This procedure allows for a counter notice procedure to prevent such working and translate the loss of the right to compensation. The Mining Code is to be included in this Scheme as the GIS information shows that there are no workable minerals that will be impacted by the scheme.
- 6.1.4** Section 8 of the Highways Act 1980 provides that local highway authorities may enter into agreements with an adjoining highway authority to transfer the functions of one highway authority to another and this includes the power to acquire land compulsorily.
- 6.1.5** The Council will need to consider at a later date the making of a Compulsory Purchase Order, a Bridge Scheme and a Side Roads Order by proceeding under powers contained in the Highways Act 1980 and the Acquisition of Land Act 1981 authorising the compulsory purchase of land and the rights required to deliver the Scheme, together with improvements to highways, stopping up of highways, stopping up of rights of way and private means of access and providing replacement of private means of access.
- 6.1.4.** In submitting the CPO to the Secretary of State for Transport for confirmation, the Council must demonstrate that there are no physical or legal impediments to implementation of the CPO. The lack of a Bridge Scheme is such an impediment to the Scheme, as are some of the technical and legal issues with the drafting of the Orders. As such, the Secretary of State for Transport will be unable to confirm the made Orders and the Scheme would not be deliverable. This, therefore, necessitates the formal withdrawal of



the Orders and remaking of Orders that comply with statute and guidance and present a compelling case in the public interest for confirmation.

## **6.2. Finance**

**6.2.1.** The requirement to reissue certain notices will incur additional legal advice costs and officer time. These costs will be funded from the approved capital budget for this project, as published in the Medium-Term Financial Strategy. The value of these costs is unknown at this stage. Abortive costs from the first Compulsory Purchase Order process will be charged to the Strategic Infrastructure revenue budget but may be recoverable from other sources.

**6.2.2.** Where parties impacted by the Scheme have lodged objections to the Orders, these objections will fall away when the Orders are formally withdrawn; however, when the new CPO, SRO and Bridge Scheme are made, parties will have the chance to lodge representations (as appropriate) to the National Casework Team of the Department for Transport. In doing this, those parties that have previously objected may be able to make a claim for costs associated with the withdrawn Orders. It is likely that the objections currently lodged to the Orders will be replicated for any new CPO, SRO and Bridge Scheme (as appropriate) and are unlikely to result in a significant element of duplicated time. As the parties would need to prove a loss to make a claim, it is considered that any such claims are likely to be minimal.

## **6.3. Policy**

**6.3.1.** There are no direct policy implications, however, there may be as a consequence of any further action taken

## **6.4. Equality**

**6.4.1.** There are no direct equality implications, however, there may be as a consequence of any further action taken. The withdrawal of the

Orders will be notified to all parties that received notification of the Orders and will be publicised on the Council's dedicated Scheme webpage. All parties will, in due course, have the ability to make representations to the CPO, SRO and Bridge Scheme (as appropriate), with a wholly new statutory period for representations to be made. As such, it is not considered that any party is prejudiced by the withdrawal of the Orders.

**6.5. Human Resources**

- 6.5.1.** There are no direct human resources implications, however, there may be as a consequence of any further action taken

**6.6. Risk Management**

- 6.6.1.** There are direct risk management implications, associated with the increased costs to the scheme, additional time delay and the cancellation of planned construction works. The Project team have taken actions to mitigate the impacts of these risks.

**6.7. Rural Communities**

- 6.7.1.** There are no direct implications on rural communities, however, there may be as a consequence of any further action taken

**6.8. Children and Young People/Cared for Children**

- 6.8.1.** There are no direct implications, however, there may be as a consequence of any further action taken

**6.9. Public Health**

- 6.9.1.** There are no direct public health implications, however, there may be as a consequence of any further action taken

**6.10. Climate Change**

- 6.10.1.** There are no direct climate change implications, however, there may be as a consequence of any further action taken

<b>Access to Information</b>	
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Appendices:	None
Background Papers:	Cabinet Report dated 7 July 2020