

Report of the Strategic Director – Place to the meeting of Executive to be held on 24th March 2020

Subject:

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**Bradford to Shipley Route Improvement Scheme
West Yorkshire Plus Transport Fund Project**

Summary statement:

This report will: -

- 1) Update the Executive on the outcome of preliminary enquiries with some landowners and affected parties, along with recommendations on whether it may be necessary to rely on the use of compulsory purchase powers to support the scheme.**
- 2) Seek approval in principle, to the use of relevant Orders required for the acquisition of land and any rights needed.**

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Portfolio:
Regeneration, Planning and Transport

Overview & Scrutiny Area
Regeneration and Environment

1. SUMMARY

- 1.1 Bradford Council in partnership with the West Yorkshire Combined Authority is planning to improve the Bradford to Shipley Corridor. This report will:
- 1) Update the Executive on the outcome of preliminary enquiries with some landowners and affected parties, along with recommendations on whether it may be necessary to rely on the use of compulsory purchase powers to support the scheme.
 - 2) Seek approval in principle, to the use of relevant Orders required for the acquisition of land and any rights needed.

2. BACKGROUND

- 2.1. The Bradford to Shipley corridor is a key strategic route network which links the two centres, as well as a crucial connector route between the city of Bradford with key local centres within Airedale and Wharfedale such as Keighley and Ilkley.
- 2.2 The £47.9m Bradford to Shipley Route Improvement Scheme proposes measures to reduce journey times, improve air quality, reduce road casualties and make the surrounding environments more ecologically friendly.
- 2.3 The scheme includes sections of the A650 Manningham Lane, Keighley Road, Bradford Road, the A6037 Canal Road, Valley Road and A6038 Otley Road, A6181 Hamm Strasse, Valley Road, A6177 Queens Road and Kings Road.
- 2.4 The Outline Business Case (OBC) for the Bradford to Shipley Route Improvement Scheme was approved by the Combined Authority in December 2019 and the principles of the preferred scheme options was supported and approved by Executive on the 7th January 2020.
- 2.5 As described in the report to Executive on the 7th January 2020, land acquisition will be required for both of the preferred options however the impact on land has been kept to a minimum compared to other more ambitious options that were considered within the OBC submission.
- 2.6 The Executive on the 7th January 2020 resolved:
- (1) That the proposals described in both of the preferred “with” and “without” new Valley Road railway bridge options as the preferred approach to the delivery of the Bradford to Shipley Route Improvement Scheme agreed by the West Yorkshire Combined Authority’s Outline Business Case submission approval be supported and approved.*
 - (2) That making contact with land owners / affected parties to explore the extent to which it may be possible to acquire land and rights needed for the scheme through voluntary negotiation be approved.*

(3) That a further report be presented to the Executive on the outcome of preliminary enquiries with landowners and affected parties, along with recommendations on whether it may be necessary to rely on the use of compulsory purchase powers to support the scheme.

- 2.7 Further information about the Bradford to Shipley Route Improvement Scheme including the scheme objectives, benefits, key issues and timescales can be found in the report to Executive on the 7th January 2020 and the projects website: <https://www.yourvoice.westyorks-ca.gov.uk/BradfordShipley>
- 2.8 The purpose of this report to Executive is to present the outcome of preliminary enquiries with landowners and affected parties, along with recommendations on whether it may be necessary to rely on the use of compulsory purchase powers to support the scheme.
- 2.9 Since the report to Executive on the 7th January 2020 the Council has undertaken market testing and made contact with some of the land owners / affected parties to explore the extent to which it may be possible to acquire land and rights needed for the scheme through voluntary negotiation.
- 2.10 Letters were sent to several land owners / affected parties on the 10th February 2020 enquiring whether they would consider a sale of the site/property.
- 2.11 Initial responses have already identified that one of the affected land owners-occupier is not interested in selling the site, which in itself would be sufficient for the council to have to use its CPO powers. It is highly likely and inevitable that it will not be possible to acquire all the land and rights needed by voluntary means without recourse to a compulsory purchase powers, given the vast number of land interests involved.
- 2.12 The extent of the land which is currently considered to be needed to be included in a CPO is shown within the area edged red on the plan annexed hereto as Appendix A (Not for publication). Any other land needed to be acquired to replace the loss of open space land or allotment land or any other special kinds of land is shown to be within the area edged red on the plan annexed hereto as Appendix B (Not for publication).
- 2.13 This Report has not been included on the published forward plan as an issue for consideration because it is impractical to defer the decision until it has been included in the published Forward Plan. The report is submitted in accordance with paragraph 10 of the Executive Procedure Rules set out in the Council's Constitution.

3. OTHER CONSIDERATIONS

- 3.1 In order to ensure the deliverability of the proposed Bradford to Shipley Route Improvement Scheme, it is proposed the Council approves in principle the use of CPO powers as a last resort to acquire the land needed to achieve the desired highway improvement objectives.

4. FINANCIAL & RESOURCE APPRAISAL

- 4.1 A £1 billion fund has been established through The Combined Authority to deliver a programme of transport interventions to support economic growth within the districts for Kirklees, Calderdale, Leeds, Wakefield, Bradford and York. This programme is collectively known as the West Yorkshire Plus Transport Fund (WY+TF). Bradford Council is seeking £47.9m in funding through the West Yorkshire-plus Transport Fund for the Bradford to Shipley Route Improvement Scheme which has been agreed in principle. The Combined Authority approved the scheme's Outline Business Case in December 2019 releasing further development funds to progress to the next stage of the assurance process (Full Business Case)
- 4.2 Funding for the scheme is totally derived from the West Yorkshire Plus Transport Fund.

5. RISK MANAGEMENT AND GOVERNANCE ISSUES

- 5.1 Responsibility for the governance of this project is the responsibility of the West Yorkshire Combined Authority and is controlled under their Assurance Framework. A rigorous project management system is in place for all West Yorkshire Plus Transport Fund projects based around the OGC PRINCE2 (Projects in Controlled Environments) and MSP (Managing Successful Programmes) methodologies.
- 5.2 A detailed QRA (Quantified Risk Assessment) register has been developed as part of the initial project development and will continue to be updated as the project proceeds through its various stages of delivery.
- 5.3 Project & Programme Board meetings consider the risks associated with scheme delivery and provide appropriate mitigating direction.

6. LEGAL APPRAISAL

- 6.1 **Compulsory Purchase Power** - This Report considers the consequences and justification of proceeding to authorise the use of CPO powers to facilitate a proposed highway improvement scheme described above. In deciding on the most appropriate power to use to enable a CPO to be made, regard must be had to the use of the specific powers available for the purposes intended. As the proposed scheme involves the compulsory purchase of land to facilitate highway improvements, it is proposed to rely on the use of statutory highway powers to:
- (a) make a CPO under as applicable, Sections 239, 240, 246, 250 and 260 of the Highways Act 1980 and under Section 2 of the Acquisition of Land Act 1981; and to include in the CPO the power under Section 40 of the Road Traffic Regulation Act 1984 to provide off-street parking places, together with a means of entrance to and egress from them, for the purpose of relieving or preventing congestion of traffic; and
 - (b) make a Side Roads Order for the scheme under Sections 14 and 125 of the Highways Act 1980 to authorise associated highway alterations to be made as a direct consequence of the scheme.

- 6.2 **Compulsory Purchase Order Guidance** - In consideration of the potential use of compulsory purchase powers to support negotiations to acquire all the land needed for the scheme, reliance has been placed on Government guidance entitled “Guidance on Compulsory Purchase Process and The Crichel Down Rules for the disposal of surplus land acquired by, or under the threat of compulsion” published in July 2019 and the procedural guidance in Department of Transport Circular 2/97 dated June 1997. Weight must be given to the Guidance to ensure that the proper compulsory procedures are followed, that the process is open and transparent and that nobody with a purported interest in land needed for the highway scheme is prejudiced.
- 6.3 **Compulsory Purchase Order Justification** - As this is the first time that the Executive has been invited to consider the making of a CPO for the Bradford to Shipley Route Improvement Scheme, the Executive must be satisfied prior to authorising the making of a CPO, that there is sufficient justification to make a CPO and to demonstrate that the Council has exercised due diligence and probity and has been open and transparent in formulating its scheme proposals and in contacting and opening negotiations with interested parties to acquire the land needed.
- 6.4 Legal Services have confirmed that the Council has the necessary legal powers to initiate a CPO to enable the scheme to be delivered, provided it can be demonstrated:
- a) that the use of CPO powers is a “last resort”, there being little or no prospect of all the land being acquired by voluntary negotiations;
 - b) that sufficient funding is or is likely to be made available;
 - c) that there are no planning obstacles;
 - d) that the scheme can be implemented and completed within a reasonable timeframe;
 - e) that the compulsory purchase process is open and transparent;
 - f) that due regard has and is being given during the compulsory purchase process to the rights of the individual under human rights and public sector equality impact legislation; and
 - g) that there is a compelling case for the scheme in the public interest.
- 6.5 It is proposed that a planning application for the scheme will be submitted Winter 2020/2021
- 6.6 **Expert Advice**- it is not considered that any external specialised expert advice is needed at this stage of the compulsory purchase process, although it might be necessary to instruct Counsel should a local public Inquiry be held to consider objections if a CPO is made and published.

7. OTHER IMPLICATIONS

7.1 EQUALITY & DIVERSITY

7.1.1 In addition to the human rights legislation and requirements, project officers in formulating and promoting a CPO for the highway scheme have so far and at this stage, also had regard to the Council's statutory duties and obligations under the Equality Act 2010 and in particular, to the Council's obligations under Sections 149 and 150 of the said Act, by taking into account the differential impact the proposed CPO might have on various groups of persons with protected characteristics. As a result, project officers are satisfied that no negative impact upon any protected social groups has been identified. A detailed Equality Impact Assessment has been attached as Appendix C.

7.1.2 Moreover, the scheme aims to maximise public access by being, fully DDA compliant with plans to consult and engage all relevant stakeholder groups throughout the highway improvement design process.

7.2 SUSTAINABILITY IMPLICATIONS

Not applicable

7.3 GREENHOUSE GAS EMISSIONS IMPACTS

Not applicable

7.4 COMMUNITY SAFETY IMPLICATIONS

Not applicable

7.5 HUMAN RIGHTS ACT

7.5.1 **The rights of the individual** – An important part of the compulsory purchase process is the need to ensure that the rights of the individual are recognised and taken into account by complying with the following human and equality rights -

7.5.2 Section 6 of the Human Rights Act 1998 prohibits public authorities from acting in a way that is incompatible with the "European Convention on Human Rights". Various Convention rights are likely to be relevant to the Compulsory Purchase Order, including –

7.5.3 **Entitlement to a fair and public hearing** in the determination of a person's civil and political rights (Convention Article 6) - this includes property rights and can include opportunities to be heard in the consultation process.

7.5.4 **Rights to respect for private and family life and home** (Convention Article 8) - Such rights may be restricted if the infringement is legitimate and fair and proportionate in the public interest.

- 7.5.5 **Peaceful enjoyment of possessions** (First Protocol Article 1) - This right includes the right to peaceful enjoyment of property and is subject to the Council's right to enforce such laws as it deems necessary to control the use of property in accordance with the general interest.
- 7.5.6 **Right to life** - in respect of which the likely health impacts of the proposals will need to be taken into account in evaluating the scheme (Conversion Article 2).
- 7.5.7 The European Court has recognised that "*regard must be had to the fair balance that has to be struck between the competing interests of the individual and of the community as a whole*". Both public and private interests are to be taken into account in the exercise of the Council's compulsory purchase powers and duties as a local planning authority. Any interference with a Convention right must be necessary and proportionate. If compulsory purchase powers are required, project officers are of the view that in pursuing a CPO, careful consideration has been given to the balance to be struck between individual rights and the wider public interest. Any interference with Convention rights is considered to be justified in order to secure the economic, social, physical and environmental regeneration that the redevelopment scheme will bring. Appropriate compensation will be available to those entitled to claim it under the relevant provisions of the compulsory purchase national compensation code.
- 7.5.8 Project officers therefore believe that the highway improvement scheme is in the public interest and that this outweighs any harm that may be caused by the use of compulsory purchase powers to acquire and interfere with third party land and rights needed for the scheme. That any interference with any human rights protected by the Human Rights Act 1998 and the "European Convention on Human Rights" is considered to be justifiable in order to secure the public benefits that the scheme will bring to the community and wider area."

7.6 TRADE UNION

- 7.6.1 There are no Trade Union implications arising from this report

7.7 WARD IMPLICATIONS

- 7.7.1 The scheme impacts on 5 wards as shown below:

- Bolton & Undercliffe Ward
- Mannigham Ward
- Windhill & Wrose Ward
- Heaton Ward
- Shipley Ward

- 7.7.2 Phase 1 consultation was carried out between December 2018 and February 2019. Results of the consultation "Phase 1 Outcome Report" can be found on the projects website www.yourvoice.westyorks-ca.gov.uk/bradfordshipley

- 7.7.2 Phase 2 consultation is expected to be carried out late May / early June 2020 for approximately 4 weeks that will consist of a number of drop-in sessions, leaflets and letters.

7.7.3 Councillors will be informed of the schemes proposals in advance of the public consultation.

7.8 IMPLICATIONS FOR CORPORATE PARENTING

7.8.1 Improvements to air quality, road safety, modal shift from car to walking, cycling and using public transport will improve the environment for children and young people and will have a positive effect on outcomes for health and wellbeing.

7.9 ISSUES ARISING FROM PRIVACY IMPACT ASSESMENT

7.9.1 A data protection Impact Assessment is being carried out.

8. **NOT FOR PUBLICATION DOCUMENTS**

Appendices A and B are Not for Publication and are exempt from disclosure in accordance with paragraph 3 of schedule 12a (financial or business affairs) of the Local Government Act 1972. It is considered that in all the circumstances, the public interest in maintaining the exemption outweighs the public interest in disclosing the information

9. **OPTIONS**

9.1 If the Council continues to rely on current negotiations and only seeks to authorise a CPO if negotiations break down, valuable time would be lost. By making a CPO for the scheme at this stage, it demonstrates that that the Council is serious in its intentions to promote the scheme with the support of CPO powers and which in turn, might encourage those whose land is affected to enter into more meaningful negotiations.

9.2 In essence – the Council can either make a CPO in accordance with the recommendations below whilst continuing to explore whether the scheme land can be acquired by voluntary means and if not, to use compulsory purchase powers as a last resort, or;

9.3 Not authorise a CPO to be made to acquire the scheme land and instead to continue to rely on voluntary negotiations, notwithstanding that there is at present, little indication of all the land needed being able to be acquired by voluntary negotiations. As a result, the Executive is strongly invited to authorise a CPO and Side Roads Order to be made for the scheme in accordance with the recommendations below.

10. **RECOMMENDATIONS**

10.1 That the Executive approve the following recommendations:

10.2 That the Executive is satisfied that at this stage there is little or no prospect of the land and rights being acquired through voluntary means, that the proposed Bradford to Shipley Route Improvement Scheme is in the public interest and that any harm caused by the use of compulsory purchase powers to acquire and

interfere with third party land and rights needed for the scheme is outweighed by the public benefits which the improvement scheme will generate, having also taken into account at this stage, the Council's statutory obligations under the Equality Act 2010 in relation to the differential impact a Compulsory Purchase Order might have on various groups of persons with protected different characteristics;

10.3 That in principle, the following Orders be made -

- a) The City of Bradford Metropolitan District Council (Bradford to Shipley Route Corridor) (Improvement Scheme) Compulsory Purchase Order 2020, pursuant to Sections 239, 240, 246, 250 and 260 of the Highways Act 1980; and Section 40 of the Road Traffic Regulation Act 1984 and Section 2 of the Acquisition of Land Act 1981 for the purpose of relieving or preventing congestion of traffic by providing off-street parking places together with means of entrance to and egress from them and Section 1 of the Localism Act 2011 and all other relevant and enabling powers to secure the compulsory acquisition of the land and rights needed to promote the scheme within the land shown edged red on the plan annexed hereto and displayed at the Executive and marked (Not for publication Appendix A) and as the case may be, the additional land shown edged red on the plan annexed hereto and displayed at the Executive and marked (Not for publication Appendix B).
- b) The City of Bradford Metropolitan District Council (Bradford to Shipley Route Corridor) (Improvement Scheme) (Side Roads) Order 2020, pursuant to Sections 14 and 125 of the Highways Act 1980.

10.4 That the Strategic Director: Place in consultation with the Portfolio Holder for Regeneration, Planning and Transport be granted delegated authority to:

- a) Determine whether and the extent to which a CPO and Side Roads Order need to be made and submitted to the Secretary of State for Transport for confirmation, subject to being satisfied that there is sufficient justification to support the making of a CPO and Side Roads Order and that there is evidence that due diligence and governance has been correctly followed and observed in complying with all relevant statutory procedures, including but not limited to the Council's statutory duties and obligations under human rights and public sector equality legislation;
- b) vary and determine the exact statutory powers to make the CPO and Side Roads Order and if necessary, to make minor or technical amendments to each of the Orders to determine and settle the extent of the land needed to be included in the CPO and the extent of any associated highway alterations in the Side Roads Order, including varying and finalising the exact CPO boundary and highway alterations to be placed in the Side Roads Order;
- c) modify and settle the draft "Statement of Reasons" to justify the use of compulsory purchase powers, the CPO Map and CPO Schedule and all other legal documentation necessary to support and accompany the CPO and Side Roads Order to the Secretary of State for Transport for confirmation;

- d) authorise if necessary, an application to be made to the Secretary of State for Housing, Communities and Local Government pursuant to Section 19: Acquisition of Land Act 1981 to obtain approval to include in the CPO any additional land needed to be acquired to replace land currently used for open space recreation, allotment land and any disused burial sites and any other special kinds of land where such statutory approval is needed to replace such land being lost as a result of the scheme;
- e) approve agreements with landowners setting out the terms for withdrawal of any objections to the CPO, including where appropriate, seeking exclusion of land from the CPO and highway alterations from the Side Roads Order;
- f) confirm the CPO if satisfied that it is appropriate to do so, in the event that the Secretary of State for Transport notifies the Council that the Council has been given the power to confirm the CPO;
- g) promote any modifications to the CPO and Side Roads Order, if felt expedient to do so;
- h) take all and any necessary action, as the case may be to continue or open negotiations with persons for the acquisition of land and rights needed to facilitate the scheme and any other interests included in the CPO and any other land and rights needed for the scheme and to authorise acquisitions by agreement where the use of compulsory purchase powers is in contemplation and to approve the purchase price, advance payments and all other compensation payments;
- i) take all necessary steps in relation to any statutory blight proceedings instituted against the Council for the acquisition of land claimed to be blighted by the threat or presence of the CPO;
- j) take all necessary action, should the quantum of compensation flowing from the threat or use of compulsory purchase powers be in dispute and be referred to the Upper Tribunal (Lands Chamber) or other form of arbitration;
- k) to take and do all things necessary or incidental to the implementation of the above resolutions; and
- l) that all land acquired for the scheme be held for highway purposes.

11. APPENDICES

Not for publication Appendix A – Indicative CPO plan

Not for publication Appendix B – Indicative Exchange Land plan

Appendix C – Equality Impact Assessment

12. BACKGROUND DOCUMENTS

- Report to Executive 9th October 2012
- Report to The Council 16th October 2012
- Report to Executive 7th January 2020