

Central Bedfordshire Council

Executive

Tuesday 4 April 2017

A421 Dualling Project - Compulsory Purchase Order

Joint Report of Cllr Ian Dalgarno, Executive Member for Community Services (ian.dalgarno@centralbedfordshire.gov.uk), and Cllr Nigel Young (Executive Member for Regeneration (nigel.young@centralbedfordshire.gov.uk))

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This report relates to a Key Issue

Purpose of this report

1. The dualling of the section of the A421 between Junction 13 of the M1 in Central Bedfordshire and the new Milton Keynes Magna Park will complete the upgrading of the A421.
2. This report seeks authorisation from the Executive to make the Central Bedfordshire Council (A421 widening and improvement) Compulsory Purchase Order 2017 to acquire compulsorily land to the south of the existing highway within Central Bedfordshire to provide part of a dual carriageway that will connect with similar highway improvement works being undertaken in Milton Keynes.

RECOMMENDATIONS

The Executive is asked to authorise:

1. **the Director of Community Services and the Assistant Director Legal Services (Monitoring Officer) to make a Compulsory Purchase Order to be known as “The Central Bedfordshire Council (A421 widening and improvement) Compulsory Purchase Order 2017” under Sections 239, 240, 246 and 249 of the Highways Act 1980 in respect of the land and property indicated on a map marked with the name of the Compulsory Purchase Order, which is appended to the report as Appendix A; and**

2. the Assistant Director Legal Services (Monitoring Officer) be authorised to make arrangements -

- a) to take all necessary steps in connection therewith including: the making and serving of the Order, the signing publication and serving of all notices, the submission of the Order to the Secretary of State for Transport (and if any objections were received) the making of arrangements for a Public Inquiry including the appointment of Counsel; and**
- b) to either serve a Notice to Treat under the Compulsory Purchase Act 1965 or make a General Vesting Declaration under The Compulsory Purchase (Vesting Declarations) Act 1981 so as to acquire all necessary interests in the land and property included in the confirmed Compulsory Purchase Order.**

- 3. The Executive on 2 August 2016 considered a report from the Executive Member for Community Services that set out the proposal for the dualling of the section of the A421 between the M1/J13 and the new Milton Keynes Magna Park.
- 4. The Executive resolved that officers continue preparatory work for the acquisition of the land required for the scheme, including its compulsory purchase if that proves necessary. If a Compulsory Purchase Order (CPO) was required, this would be reported to full Council at a later date.
- 5. This report seeks authorisation for the acquisition of land within Central Bedfordshire required for the scheme and gives detail of the proposed CPO which is to be made and advertised.

Overview and Scrutiny Comments

- 6. The Chairman of the Sustainable Communities Overview and Scrutiny Committee has been consulted and he confirmed that the proposal could be considered by the Executive on 4 April. The acquisition of the land required for this project is an essential element which must be in place before the Full Transport Business Case is submitted to the Department of Transport. Any delay, as a result of deferring the report to the next Executive meeting on 6 June 2017, at this critical stage, will impact on the programme and this will have a knock on effect on delivery.

Background

- 7. The A421 project which Central Bedfordshire Council is leading on will dual a section of the A421 (between the M1/J13 and the Milton Keynes, Magna Park which traverses the administrative boundary between Central Bedfordshire Council and Milton Keynes Council.

The scheme will complete the upgrading of the A421 between Bedford and Milton Keynes, thereby improving strategic linkages between Central Bedfordshire and Milton Keynes.

8. The Department for Transport (DfT) allocated the A421 scheme £22.5m from the Local Growth Fund (LGF) administered by South East Midlands Local Enterprise Partnership (SEMLEP). A further £1m was awarded by the Local Transport Board to support the development of the scheme.
9. The DfT have now re-designated the scheme as a 'Portfolio Scheme' initiative, overseen by DfT under the 'Large Transport Project Portfolio'. This means that a full business case must be signed off by the DfT in order to release the £22.5m funding.
10. The DfT require a number of elements to be completed before the final business case can be submitted including: planning permissions secured for the structures, all land transfer agreements to be in place and the Memorandum of Understanding (MOU) setting out funding contributions to be agreed. This report seeks authorisation to begin the CPO process to ensure that the land required for the scheme is available when required for the project.

The Land to be Acquired

11. The Land to be acquired compulsorily is to the North West of Junction 13 of the M1. It is generally a linear strip of land that is approximately 15m wide it does include two drainage ponds which are shown as J1 and J2 on the Map. The strip of land extends along the southern side of the A421 up to the administrative boundary with Milton Keynes. This will extend for 2.5km from the M1 J13 to the Milton Keynes borough boundary where Cranfield Road currently crosses the A421 on an overbridge. The land to be acquired which is all in Central Bedfordshire comprises some 9.6 ha.
12. The extent of the land take is shown on the Map to the Order (copy attached to this report). The land within the Order is all located within Central Bedfordshire.
13. In general terms the land is open agricultural land and in working agricultural use. There are two main land holdings. The plot numbers and areas of land take are shown on the Map and upon one of the plots there is an agricultural tenancy. There are no residential properties that need to be acquired. Future rights of access for the highway authority and its contractors will be required over this land for constructing the drainage and for its future maintenance.
14. The extent of the Order land is described in detail in the schedules of land Interests incorporated in the Order.

Attempts to Acquire the Land

15. Recent Guidance on the Compulsory Purchase Process published in 2015 advocates that acquiring authorities undertake negotiations in parallel with landowners and other interested parties when preparing and making the Order. It also encourages in their dealings with landowners that they show “that the authority is willing to be open and to treat their concerns with respect”. This encourages discussion with affected landowners, explaining the scheme, identifying mitigation measures and thereby reducing anxiety and concerns.
16. Negotiations have been ongoing with the two affected landowners since late 2015 when initial draft heads of terms were issued to both landowners. Progress has been slow to begin with as the detailed plans for the project were not finalised and the exact areas of land needed was not known. This was finalised on 18 November 2016. Another factor that has caused delay is that both landowners have signed agreements with a consortium of builders to allow for the future development of their land. This has meant that anything proposed by the Councils agents has had to be discussed with and agreed by the consortium as well.
17. It is hoped that agreement on the heads of terms to acquire the necessary land will be forthcoming and discussions with one landowner are close to achieving this. Negotiations with the second land owner have progressed more slowly and heads of terms are still not agreed. At time of writing there remains at least one technical point that still has to be resolved with their agents.
18. Once heads of terms are finalised then the legal documents have to be drawn up, agreed and completed.
19. Whilst it is accepted that the making of a Compulsory Purchase Order requires a compelling case and should be a measure of last resort it is felt that negotiations have been taken as far as they can for now and will continue after the Order is made and served. Highways England have also been consulted and support the scheme. The widening works will also affect an access to farm buildings at Hayfields Farm and the effects and necessary mitigation will be discussed with the farmer affected.

The Proposed Works

20. The A421 scheme will provide much-needed extra traffic capacity, journey reliability and safety; ease the access at planned developments; and complete the overall A421 dual carriageway route standard across the sub-region; so as to enable better highway connectivity between Milton Keynes, M1, Bedford and A1.

21. The total length to be widened is 3.0km (consisting of 2.5km in Central Bedfordshire and 500m in Milton Keynes which is being acquired by agreement) As well as providing the extra carriageway the works will repair the existing surfaces which are in danger of structural failure and have drainage problems.
22. The widened carriageway will require the extending of two bridge structures one carrying a bridleway and one at the administrative boundary the Cranfield Road bridge. The road will also cross two culverts the design of which will require approval from the internal Drainage Board. There will also be ancillary works landscaping and drainage facilities there are two balancing ponds. One is located near to an existing HE facility near to the M1 Junction and a second adjacent to the bridleway bridge crossing at J1 and J2 respectively.

Planning Permission and Other Consents

23. The Council are acquiring land under powers conferred by the Highways act 1980. As the local highway authority they also benefit from powers conferred under the Town and Country Planning (General Permitted Development Order) (England) 2015. This grants Permitted Development rights to Highway Authorities to carry out works of improvement on land adjoining but outside the boundary of a highway. The works being required or incidental to the highways improvement or maintenance. The Central Bedfordshire Planning authority have provided an opinion that the dualling scheme would come within this provision within Central Bedfordshire and will benefit from the deemed planning permission. The project has undertaken an environmental investigation along the entire A421 scheme and is aware of the need to provide landscape and ecological mitigation for the scheme.
24. As far as drainage is concerned the Internal Drainage Boards have been consulted and have indicated that they will consent to the designs for new drainage infrastructure.
25. The scheme extends into Milton Keynes where negotiations are taking place by that authority with local stakeholders. It is envisaged that the necessary land will be acquired in Milton Keynes by agreement. The land required lies to the west of the Cranfield road bridge and comprises a strip of land for the widening and land for a balancing pond. That agreement will need to be in place before any Public inquiry into the CPO takes place (should there be any objections to the Order). The acquiring authority will need to show there are no impediments to the schemes implementation before confirming the order. There is good support for the scheme in the local planning policy documents prepared by both local planning authorities and a Memorandum of Understanding has been prepared to confirm both Councils commitment to the scheme.

Policy Support

26. Department for Transport (DfT)

The current Government elected in 2015 has set out a strengthened agenda for economic growth, with infrastructure investment programmes geared to supporting this. The Government has announced continuous capital investment (by DfT), over a five year period, to be spent on high-speed rail, roads and local transport. This reflects a continuing focus on economic growth and associated jobs and housing growth. It is within this context that the strategic case for A421 dual carriageway (M1/ J13 – Milton Keynes, Magna Park) has been based.

27. South East Midlands Local Enterprise Partnership (SEMLEP)

The SEMLEP Transport Strategy sets out the following strategic goals which have been used to prioritise transport infrastructure investment:

Provide quality, safe access to services and opportunity. Maintain and enhance the region's links with the wider economy. Build capacity to enable growth and economic development. Protect and enhance the built and natural environment.

Using this framework, the SEMLEP Local Transport Board (LTB) have identified four major projects as being essential to secure the early delivery of development and therefore as the priority for the first stages of funding. Of these four projects, A421 dualling is listed as the highest priority and is judged to make a significant contribution to the first three of the above strategic goals. The scheme was also identified as a priority in the SEP, though the ordering of schemes was slightly different, reflecting the wider perspective of the SEP. In the SEP, the A421 dual carriageway scheme (Fen Farm to J13 of M1) is judged to deliver key economic outputs in terms of 2,500 jobs (200 construction jobs) and 2,900 homes.

28. Central Bedfordshire Council / Milton Keynes Council

The A421 proposal is important in the context of both Milton Keynes and Central Bedfordshire, both of which have Local Plans (encompassing spatial development) and Local Transport Plans (LTP's) in place, both LTP's recognise the benefits of dualling the A421 between M1/J13 and Milton Keynes.

Funding

29. The successful acquisition of land required for this project will support the Full Transport Business Case to release the remaining £21m DfT funding contribution via the Local Growth Fund (LGF).

30. The degradation of the existing road is such that if the A421 dualling scheme does not go ahead the costs associated with the required works to reconstruct the existing carriageway are estimated at £5.85m. Therefore, by investing in the project there will be savings on maintenance costs and at the same gain improved infrastructure.
31. The approximate costs associated with the compulsory purchase process ranges from £30k to £100k (if a public enquiry is required), these costs will be met from the project budget 2017/18, that have been budgeted There is also the land acquisition costs that have also been budgeted.
32. In the event that the compulsory purchase process is required, then the timescale will range between 6 and 12 months, which may have a significant risk on the overall programme for this project.

Reason for decision

33. This decision is required to authorise the project to move to the next Stage.

Council Priorities

34. The A421 scheme supports the Council's priorities to enhance Central Bedfordshire and provide great resident services by delivering improved infrastructure that will open opportunities to employment, leisure activities and housing.

Corporate Implications

Legal Implications

35. The Compulsory Purchase Order will be publicised in local newspapers and by service on affected landowners and those with an interest in the land affected or whose rights may be affected.
36. Land owners have the right to make statutory objection within the 21 day publicity period. An objection may lead to a public inquiry.
37. If the Orders are confirmed the land can be brought in either by serving Notice to Treat or the making of a General Vesting Declaration. Owners whose land is taken have the right to be compensated under the compensation code those whose rights may be affected also may have a right to compensation and the Council will be expected to provide alternative arrangements if rights are interfered with where possible.

Human Rights Act

38. It is acknowledged that this proposal will have an effect on the human rights of the owners of the land , however, on balance it is suggested that the Council finds the public benefit of the proposal outweighs the impact on those affected.

Regard has been taken in particular to the provisions of Article 1 of the First Protocol to the European Convention on Human Rights and to Articles 6 and 8.

39. The order will affect the Article 1 rights of the present owner if confirmed by the Secretary of State. However there shall be no violation of those rights as officers are content that the steps taken are in the public interest and lawful as required by the first protocol. Those directly affected by the order will be entitled to compensation to be settled in absence of agreement by the impartial Upper Tribunal.
40. Article 8 of the Convention provides as follows: *“(1) Everyone has the right to respect for his private and family life, his home and his correspondence (2) There shall be no interference by a public authority with the exercise of this right except such as is in accordance with the law and is necessary in a democratic society or the economic wellbeing of the Country,* Article 8 is a qualified right and interference can be justified in appropriate cases with reference to Article 8(2).
41. The Order will be made pursuant to the Highways Act 1980 which authorises the Council to acquire land compulsorily subject to following the procedures laid down in the Acquisition of Land Act 1981. The public benefit will outweigh the private loss in this case. In the circumstances, the compulsory acquisition of the Order Land will not conflict with Article 8 of the Convention.
42. The Order when made will be publicised and all those affected by the Order will be notified and have the opportunity to make objections and to be heard at a public inquiry before a decision is made on whether or not the Order should be confirmed. A right of legal challenge exists to this process in accordance with section 23 of the Acquisition of Land Act 1981. All of those whose Article 1, Article 6 and Article 8 rights would be affected by the Order will have an opportunity to object to it and to have their objection considered at an independent and public hearing. Statutory judicial challenge provisions also exist.

Financial and Risk Implications

43. The successful acquisition of land required for this project will support the Full Transport Business Case to release the remaining £21m Department for Transport Local Growth Funding
44. The degradation of the road is such that if the A421 dualling scheme does not go ahead the costs associated with the required works to reconstruct the existing carriageway are estimated at £5.85m. Therefore, by investing up to a maximum of £3m in the dualling scheme the Council will save £2.85m and gain improved infrastructure.

Equalities Implications

45. Central Bedfordshire Council has a statutory duty to promote equality of opportunity, eliminate unlawful discrimination, harassment and victimisation and foster good relations in respect of nine protected characteristics; age disability, gender reassignment, marriage and civil partnership, pregnancy and maternity, race, religion or belief, sex and sexual orientation
46. An Equalities Impact Assessment (EIA) will be produced as part of the project. This will focus on the general requirements of people with disabilities ensuring that these are taken into account within government guidance and design standards appropriate to the A421 Dualling project. The specific needs of different groups of local people will be sought through public consultation.
47. Publicity and information associated with the project will be clear, concise and in simple language. Alternative formats will be provided if required. Publicity and information will be clear, concise and in simple language.

Conclusion and next Steps

48. Providing authorisation is given to make the CPO the acquisition process will shortly commence. Once the necessary land is secured the Full Transport Business Case will be submitted to the Department for Transport (DfT) to secure a £21m funding contribution to the scheme.
49. The detailed scheme design is almost complete, a contractor will be procured to deliver the project via the Eastern Highways Alliance Framework.
50. Subject to DfT approval of the Full Transport Business Case it is anticipated that construction will commence towards the end of 2017, it is estimated construction will take 18-24 months.

Appendices

51. Appendix A: Map referred to in the Central Bedfordshire Council (A421 widening and improvement) Compulsory Purchase Order 2017