

Report title: M11 J7A – Decision to acquire land by Compulsory Purchase and the publication of Compulsory Purchase Orders and associated documents	
Report to: Cabinet	
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Date: 23 November 2017	For: Decision
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County Divisions affected: North Weald and Nazeing and all Divisions in Harlow District.	

This report includes a confidential appendix which is not for publication as it contains exempt information falling within paragraph 3 of schedule 12A to the Local Government Act 1972 as amended.

1. Purpose of Report

- 1.1 To inform the Cabinet Members of the current status of the M11 J7a project and to seek authority that ECC exercise its own highways construction etc. powers and those of Highways England Company Limited to compulsory purchase the land identified on the land plots drawing in Appendix A and detailed in Schedule 1 in Appendix B for the purpose of constructing the scheme. Therefore, this report requests the Cabinet to authorise the publication of the necessary Compulsory Purchase Orders (CPOs) to avoid potential delays and excessive costs should land negotiations, which are ongoing, prove unsuccessful. Acquisition is required for both temporary and permanent situations (as denoted by the colour of the land plots on the CPO plan).
- 1.2 This report also requests authority to proceed with the project through the Main Works tender process up to the decision to award the contract and to delegate Cabinet's authority to award the Enabling Works contract to the Director for Capital Delivery, Paul Crick.

2. Recommendations

- 2.1 Authorise the Director, Capital Delivery to enter into agreements with Highways England and the Secretary of State for Transport under which the Council will deliver the M11 Junction 7A scheme at the expense of Highways England / the Secretary of State for Transport.
- 2.2 Agree that if the Director, Capital Delivery is unable to acquire the land by agreement on reasonable terms he may, after consulting the Leader of the Council, authorise the making of Compulsory Purchase Orders to acquire the land shown at appendix A for the construction of the M11 J7a scheme and the

improvement of the B183 and other roads and to pursue the Orders to confirmation as well as any additional legal processes required as a result of the arrangements with Highways England Company Limited.

- 2.3 Authorise the Director, Capital Delivery to agree minor changes to the boundaries of the land to be acquired after consulting the Leader of the Council.
- 2.4 Agree that the Director, Capital Delivery may progress enabling works for the scheme to facilitate construction of the scheme.
- 2.5 Authorise proceeding with the tender process for the enabling works using the Eastern Highways Framework procurement process.
- 2.6 Delegate authority to the Director for Capital Delivery to award the enabling works Contract to the tenderer who submits the bid which is evaluated as the highest scoring subject to a maximum value of £3m.
- 2.7 Authorise the Director, Capital Delivery to approve the illustrative design and undertake a procurement of a contractor using a design and build contract using the restricted procedure in the Public Contracts Regulations 2015. This will include the determination of the price quality split of the Contract by the Director, Capital Delivery. A further report will be issued to Cabinet on the award of the contract to the successful tenderer.

3. Summary of issue

Background

- 3.1 Harlow was designed in the 1940s as a new town. The continued growth of the town and the resulting pressure on the road network now demands that a strategic plan for the future needs to be agreed to reduce current and forecast congestion and access issues already manifest and likely to worsen. Junction 7 is the only access to the M11 for the Harlow area and is the only junction on the M11 between the M25 and Bishop's Stortford. This single access causes congestion on the local network that will continue to increase as growth in the area continues. Growth is likely to continue to fulfil the Government's focus on generating economic growth and housing development.
- 3.2 Without an improved link to the motorway, the town and surrounding Districts will not be able to realise their full potential and deliver their emerging Local Plan strategies. Traffic modelling work has shown that the existing M11 junction 7 is now at capacity. An increase in road network capacity and resilience is needed to support the level of committed and new housing and jobs required to meet future needs and support economic development and regeneration in Harlow and the surrounding areas. Without a new motorway junction and link road, the town and surrounding districts will not be able to realise their full potential.

- 3.3 Over the last 4 years ECC has investigated options to improve Harlow's road network. A strategic options appraisal report shows that a new junction on the M11 is the optimum solution to overcome the problem, although further improvements will also be required at M11 J7 in due course to provide for all of the planned future growth. Further work was undertaken, with initial designs being shared with the public at local exhibitions in 2013 and 2015.
- 3.4 Feedback from these consultations have informed the decision that in order to address the issues of congestion and to support Harlow as it continues to grow and expand, ECC is promoting the construction of a new motorway junction 7A on the M11 between junctions 7 and 8. This would connect to Harlow via a new link road to the B183 at Sheering Road (Epping Forest District Council) and Gilden Way (Harlow District Council). Further improvements are proposed along the B183.
- 3.5 The scheme received Preferred Route Status following Cabinet approval in December 2016 (Forward Plan reference number FP/456/16) which set out the justification of the route as the best delivery option for the outcomes and objectives of the scheme and there have been no significant variances that would affect the integrity of the decision.
- 3.6 Following the Preferred Route Announcement, a planning application for the new junction was submitted in January 2017. The decision notice was issued on 21 July 2017 following the Secretary of State's approval to allow the development within the designated Green Belt land.
- 3.7 The scheme is currently being developed at detailed design with approval to proceed with this stage being granted by the Infrastructure Delivery Board.

The Scheme

- 3.8 The scheme being developed is a new junction on the M11, which would be located within the district of Epping Forest and would be connected to the existing highway network within Harlow District. A plan showing the extent of the scheme is attached as Appendix A. The scheme phasing would begin to the west, at the London Road Roundabout on Gilden Way (B183) and involve the widening of the existing two-lane road to three lanes. When completed, two of the lanes would take traffic in a westerly direction into Harlow Town and the third lane would take the outbound traffic onto the M11 motorway. A roundabout, known as the Churchgate Roundabout, would have a "hamburger" configuration allowing traffic to flow through the centre of the roundabout in an east-west direction. The roundabout would also allow access into the proposed Harlowbury development. A new 2.5m wide footpath/cycleway would run from London Road to Sheering Road at The Champions.
- 3.9 At Mayfield Farm, the proposed widened carriageway would begin to veer to the right from its present route. Here a new carriageway would be built linking the existing Sheering Road with a new roundabout known as the Champions Roundabout. The existing Sheering Road would be converted into a local

access road for use by residents of the Campions only. This access road would link with the realigned Sheering Road via a new junction to the south of the new Campions Roundabout. Exiting the new Campions Roundabout, heading towards the new M11 junction, the road would connect to another new roundabout known as Pincey Brook Roundabout. Continuing towards the new motorway junction, with traffic exiting the Pincey Brook Roundabout, the road would approach the new roundabout on the western side of the M11.

- 3.10 A new two-lane road, to be known as the Westbound Link, would take traffic in the opposite direction, from the M11 to the new Campions Roundabout. The new link roads would rise on an embankment close to the motorway to allow for the differences in elevation between Sheering Road and the M11. Two new roundabouts and associated north and south bound slipways would be constructed on either side of the M11 and be connected by a new four-lane bridge over the motorway.
- 3.11 Some of the works will be carried out on land forming part of the M11 or in the ownership of Highways England Company. Authority is sought to enter into an agreement with Highways England and / or the Secretary of State for Transport so as to enable ECC to acquire land for motorway purposes as well as for the local roads with the intention that the slip roads and overbridge become part of the motorway network after they are completed. The new roads will be highways, with ECC being the highway authority for all non-motorway parts of the scheme, including the dumbbell roundabouts and the road over the new motorway bridge.

Land Negotiation

- 3.12 In order to construct the scheme we need to acquire significant land. Negotiations for the land are progressing but ultimately they may not succeed. Although we believe that the landowners accept that they need to sell, we may simply be unable to agree appropriate terms for the purchase. If we cannot agree reasonable terms then we need to make a compulsory purchase order.
- 3.13 The design of the proposed Scheme has taken account of its impact with local residents and has been designed to minimise the number of landowners affected by it. Two public information events and a formal public consultation have been carried out and all the feedback and recommendations received during the engagement programmes have been analysed and incorporated into the preliminary design where feasible. The Cabinet have previously considered the feedback and decided that the proposed route should still go ahead because of the considerable benefits that the scheme would bring. The revised scheme includes the following:
- Additional safe crossing points along Gilden Way
 - Provision of a local access road to the Campions opposite Mayfield Farm entrance
 - Closure of Churchgate subway
 - Closure of Old Road, to prevent rat running within Old Harlow

- Speed Reduction along Gilden Way.
- 3.14 To facilitate the construction of the new junction and the widening of Gilden Way it is necessary to acquire land outside the highway boundary. This is programmed to commence from January 2019 during the Main Works contract. To further mitigate the impact to local residents along Gilden Way and ultimately ensure value for money in relation to the cost of the project, the design has been developed in such a way that minimises the amount of land to be acquired as explained in the Preferred Route Status Cabinet report.
- 3.15 ECC have commissioned ECC's Land Agents, Lambert Smith Hampton, to engage with the affected landowners to negotiate acquisitions for the land required as part of the scheme and therefore avoid the need for a CPO or at least to complete negotiations before any Public Inquiry as part of the confirmation process. However, in the interest of ensuring the construction works remain on programme and to ensure a fair and reasonable cost for the land acquisition is achieved, it is the intention to proceed with the CPO process in parallel with these negotiations. The Scheme programme and budget has always included provision for the potential need of a Public Inquiry should this become unavoidable.

Implementation of the Scheme

- 3.16 The Project programme shows the enabling works Contract commencing in April 2018. This work will include the installation of drainage pipes and the diversion of underground utilities prior to the construction of the widened length of Gilden Way which will be undertaken as part of the Main Works Contract. As stated previously, the enabling works will not be impacted by the CPO process. Cabinet is asked to agree that we can procure a contract for the enabling works using the Eastern Highways Alliance Framework agreement and award the contract to the successful bidder if the works cost no more than £3m.
- 3.17 With respect to the main works, we are finalising illustrative designs which we anticipate will be completed by April 2018. It is proposed that Cabinet agree that the Director, Capital Delivery will launch a procurement procedure using the restricted procedure in the Public Contracts Regulations 2015. It is proposed that the contract will be a design and build contract and that the final split between price and quality will be determined by the Director, Capital Delivery. Cabinet will be asked to take the decision to award the contract to the successful bidder.
- 3.18 It is anticipated that, following confirmation, the land comprised in the CPO will need to be taken into ECC control in January 2019 in order to allow the commencement of the Main Works. Until the Main Works Contractor has been appointed it is not possible to be more specific as this will depend on the Contractor's method of working and programme.

4. Options

- 4.1 The Council could decide not to progress the scheme and ask Highways England to deliver it. Although this would be lower risk to ECC, it would be likely to significantly delay the delivery of the scheme, incur substantial additional cost and possibly even mean that it did not happen.
- 4.2 The Council could agree to deliver the scheme and rely on acquiring the land by agreement only. This would increase the risk of delivery of the scheme as landowners would have no incentive to negotiate reasonable terms and the scheme could be delayed.

5. Financial implications

- 5.1 All the above actions are within the estimated costs of delivering the scheme with an indicative total scheme budget (which includes spend in prior years, as set out in Appendix F (Confidential) and has also been accounted for in the development of a robust delivery programme.
- 5.2 If any of the recommendations included in this report are not approved there is a risk that the scheme costs could escalate and the delivery profile would be affected. This would be mitigated by the contingency built into the project budget.
- 5.3 As it currently stands there are no additional implications to the MTRS as a result of these decisions.
- 5.4 ECC will be liable for payments in relation to the land to be acquired on a temporary or permanent basis and other statutory compensation payments and this has been included in the budget provision.
- 5.5 The financial and reputational risk to ECC has been considered throughout the design process and the scheme has been developed to minimise the number of land owners affected by the potential CPO process and also the amount of land to be acquired. This has contributed to producing a Very High value for money scheme.

6. Legal implications

- 6.1 ECC has the power to make a compulsory purchase order for highway purposes in relation to the local road network and Highways England Company Limited has similar powers in relation to the motorway and trunk road network. In order to achieve the scheme, ECC and Highways England Company Limited will need to either act in concert or one of the two organisations take the lead in delivery of the scheme. Provided ECC obtains agreement from Highways England Company Limited to exercise their powers of acquisition, ECC can make the CPO for the entire scheme.

- 6.2 In relation to the confirmation process, through a public inquiry or otherwise, ECC will need to be able to demonstrate that it has a clear plan for the delivery of the scheme that it has the necessary resources to achieve that end within a reasonable time scale. It will also need to address any impediments to delivery.
- 6.3 It is common practice, and acknowledged in the Department of Communities and Local Government guidance, that negotiations with landowners should sensibly continue alongside a formal CPO process.

7. Human Rights and Equality and Diversity implications

- 7.1 Paragraph 12 of the Department of Communities and Local Government Guidance in 2015 states that ‘an acquiring authority should be sure that the purposes for which the compulsory purchase order is made justify interfering with the human rights of those with an interest in the land affected.’
- 7.2 Officers acknowledge that these proposals will have an effect on the human rights of those with interests in the CPO land, however, on balance it is recommended that ECC finds that the public benefit of these proposals outweigh the impact of 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, in the case of a dwelling, Article 8 of the Convention as recommended by the guidance.

Article 1 of the First Protocol to the ECHR

- 7.3 **Article 1 of the First Protocol provides that:**

“Every natural or legal person is entitled to the peaceful enjoyment of his possessions. No one shall be deprived of his possessions except in the public interest and subject to the conditions provided for by law and by the general principles of international law

The preceding provisions shall not, however, in any way impair the right of a State to enforce such laws as it deems necessary to control the use of property in accordance with the general interest or to secure the payment of taxes or other contributions or penalties”

- 7.4 The CPO will affect the Article 1 rights of the present owner/occupiers if confirmed by the Secretary of State. However, there will be no violation of those rights if we can establish a strong case in the public interest and lawful as required by Article 1 of the First Protocol. If a CPO is made, the Council will be required to demonstrate the public interest. In this case there is a clear case in the public interest because of strong transport and economic benefits of the scheme to the area. Those directly affected by the CPO will be entitled to compensation as provided by law, such compensation to be settled in the absence of agreement by the impartial Upper Tribunal (Lands).

Article 8

7.5 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 in the interests of national security, public safety or the economic well-being of the Country, for the prevention of disorder or crime, for the protection of health or morals, or for the protection of the rights and freedom of others”.

7.6 Article 8 is a qualified right and interference can be justified in appropriate cases by reference to Article 8(2).

7.7 The CPO will be made pursuant to section 239 of the Highways Act 1980 which authorises ECC to acquire land compulsorily for the construction of and improvement of highways subject to following the procedures laid down in the Acquisition of Land Act 1981. Again, ECC will need to demonstrate that there is a compelling case in the public interest to acquire the CPO land and the public benefit will outweigh the private loss. In the circumstances, the compulsory acquisition of the CPO land will not conflict with Article 8 of the Convention.

Article 6

7.8 Article 6 provides that:

“In the determination of his civil rights and obligations..... everyone is entitled to a fair and public hearing within a reasonable time by an independent and impartial tribunal established by law”

7.9 The CPO 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 CPO should be confirmed. A right of legal challenge exists to this process in accordance with section 23 of the Acquisition of Land Act 1981. Any dispute as to compensation payable falls to be determined by the Upper Tribunal (Lands).

Application of Human Rights to the Proposed CPO

7.10 To the extent that the Order would affect individual rights the proposed interference with them would be in accordance with the law, proportionate and necessary in the public interest in order to secure the redevelopment of the CPO land and improvements and benefits that the Scheme will bring.

- 7.11 All of those whose Article 1, Article 6 and Article 8 rights would be affected by the CPO will have an opportunity to object to it and to have their objection considered at an independent and public hearing. If the order is confirmed then anyone considering that the order is invalid as a result of a legal error has a statutory right to go to court to challenge the order.
- 7.12 Appropriate compensation will be available to those entitled to claim it under the relevant provisions of the compensation code and any disputes over compensation are determined by an impartial tribunal established by law.

Public Sector Equality Duty

- 7.13 The Public Sector Equality Duty applies to the Council when it makes decisions. The duty requires us to have regard to the need to:
- (a) Eliminate unlawful discrimination, harassment and victimisation and other behaviour prohibited by the Act. In summary, the Act makes discrimination etc. on the grounds of a protected characteristic unlawful;
 - (b) Advance equality of opportunity between people who share a protected characteristic and those who do not;
 - (c) Foster good relations between people who share a protected characteristic and those who do not including tackling prejudice and promoting understanding.
- 7.14 The protected characteristics are age, disability, gender reassignment, pregnancy and maternity, marriage and civil partnership, race, religion or belief, gender, and sexual orientation. The Act states that 'marriage and civil partnership' is not a relevant protected characteristic for (b) or (c) although it is relevant for (a).
- 7.15 The equality impact assessment (EqIA) indicates that the proposals in this report will not have a disproportionately adverse impact on any people with a particular characteristic.
- 7.16 An equality impact assessment was completed for the Preferred Route Status decision on 18 November 2016 and has been included in Appendix D. A second equality impact assessment was completed in relation to the known characteristics of plot owners and occupiers directly affected by this decision on 27 October 2017 and is included in Appendix E.

8. List of appendices

- Appendix A - Plan of the Scheme
- Appendix B - CPO plan
- Appendix C - CPO Schedule 1
- Appendix D - Equality Impact Assessment (Preferred Route Status)
- Appendix E - Equality Impact Assessment (CPO)
- Appendix F - Scheme Budget (Confidential)

9. List of Background papers

M11 J7A Consultation Document – June 2016

Planning application and Decision Notice: [Link to M11 J7a Planning Application](#)