

Chelmsford City Growth: Great Waltham to City Centre Cycle Route -Decision to acquire land by Compulsory Purchase Order and the publication of Compulsory Purchase Orders and the making of a Cycle Track Conversion order for affected existing public footpaths.

**Forward Plan reference number:** FP/363/02/19

**Report title:** Chelmsford City Growth: Great Waltham to City Centre Cycle Route - Decision to acquire land by Compulsory Purchase Order and the publication of Compulsory Purchase Orders and the making of a Cycle Track Conversion order for affected existing public footpaths.

**Report to:** Councillor Kevin Bentley, Deputy Leader and Cabinet Member for Infrastructure

**Report author:** Andrew Cook, Director of Highways and Transportation.

**Date:** 8<sup>th</sup> April 2019

**For:** Decision

**Enquiries to:** Ian Turner, Infrastructure Delivery, 03330 136890, [ian.turner@essex.gov.uk](mailto:ian.turner@essex.gov.uk)

**County Divisions affected:** Broomfield & Writtle

### **Confidential Appendices**

This report has a confidential appendix or confidential appendices which are not for publication as they include exempt information falling within paragraph 3 of Part 1 of Schedule 12A of the Local Government Act 1972, as amended.

## **1. Purpose of Report**

- 1.1. To inform the Cabinet Member of the current status of the cycle route project and to seek authority that Essex County Council (ECC) exercise its own highways construction etc. powers to compulsory purchase the land identified on the land plots drawing in Appendix B and detailed in Schedule 1 in Appendix D (Confidential) for the purpose of constructing the scheme. Therefore, this report requests the Cabinet Member to authorise the publication of the necessary Compulsory Purchase Orders (CPOs) to avoid potential delays and abortive or excessive costs should land negotiations, which are ongoing, prove unsuccessful and for the purpose of acquiring land identified as unregistered to enable construction of the Great Waltham to Chelmsford City Centre cycle route as shown on the accompanying plan. Acquisition is required for both temporary and permanent situations (including rights to be created as defined by blue coloured plots on the CPO Plan).
- 1.2. To make a decision on the proposed Cycle Track Order(s).

## **2. Recommendations**

Chelmsford City Growth: Great Waltham to City Centre Cycle Route -Decision to acquire land by Compulsory Purchase Order and the publication of Compulsory Purchase Orders and the making of a Cycle Track Conversion order for affected existing public footpaths.

- 2.1. To agree that if the Director of Highways and Transportation is unable to acquire the land by agreement on reasonable terms he may authorise the making of Compulsory Purchase Orders to acquire the land shown at Appendix B and detailed in Schedule 1 in Appendix D (Confidential) for the construction of the Great Waltham to City Centre Cycle Route scheme and to pursue the Orders to confirmation.
- 2.2. To authorise the publication of those Compulsory Purchase Orders (CPOs) set out in Appendix B and detailed in Schedule 1 in Appendix D (Confidential) to avoid potential delays should the current land negotiations, prove unsuccessful and for the purpose of acquiring land identified as unregistered to enable construction of the Great Waltham to Chelmsford City Centre cycle route as shown in Appendix A
- 2.3. To authorise the Director Andrew Cook, Director of Highways and Transportation to agree minor changes to the boundaries of the land to be acquired under the Compulsory Purchase Order.
- 2.4. To authorise the making of the Cycle Track Order(s) for those footpaths identified in Appendix E and pursue them to confirmation.

### **3. Summary of issue**

#### **Background**

- 3.1. The overall Chelmsford City Growth package has been developed to support Chelmsford's ongoing economic growth within a constrained transportation network, promoting an improved infrastructure network for sustainable modes of travel. The Great Waltham to City Centre cycle route will provide an important link from the north of the city. Phase 1, the section of the link from Goulton Road through to Broomfield hospital, will be constructed as a new high quality off-road cycle facility across a mixture of agricultural land and existing footpaths, providing a new safe link to the hospital, Chelmer Valley High school and the surrounding residential areas. Future Phases will continue northwards from the Hospital all the way through to Great Waltham. Phase 1 is shown Highlighted red on drawing DC20022-01-001A at Appendix A.

#### **The Scheme**

- 3.2 Three potential routes were considered. The first two used extensive on road sections and either involved significant additional diversionary distance, while also not serving key infrastructure, or could not provide a sufficient space for a safe cycle provision. A third route was investigated which follows quieter estate roads and public footpaths. Having identified a suitable route, investigations have been undertaken in respect of landownership (including the service of formal notices on reputed owners and occupiers in relation to the proposed exercise of ECC's powers in relation to the scheme) and

Chelmsford City Growth: Great Waltham to City Centre Cycle Route -Decision to acquire land by Compulsory Purchase Order and the publication of Compulsory Purchase Orders and the making of a Cycle Track Conversion order for affected existing public footpaths.

negotiations commenced to acquire the land. The third route has become the preferred option.

### **Land negotiation**

- 3.3 There are two areas of land where it has not proved possible after making reasonable enquiries, to identify the current landowners. These areas of land are identified on the provisional Compulsory Purchase Order Route Plans at Appendix C as Plots 1a, 1b, 1c, 4a, 4b, 4c and 4d, and within the overall route corridor. It is not possible to complete the proposed route without crossing these areas of land. Where landowners have been identified, ECC's Land Agents, Lambert Smith Hampton have been in discussion with them, and negotiations are in progress. It has only proved possible to date to agree terms in principle with two of the owners, and to be certain that all the land will be available to complete the scheme; it is proposed to include all the land within the Orders until such time as its acquisition is secured. 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.
- 3.4 The proposed CPO will enable ECC to expedite the acquisition of unregistered land and registered land where the landowners have been unresponsive, giving the necessary security to enable the construction of the Phase 1 scheme in its entirety.

### **Implementation of the Scheme**

- 3.5. This scheme is one element of an overall £15m South East Local Enterprise Partnership (SELEP) package of works which will, collectively, deliver a range of initiatives to encourage and improve access for all modes of travel. As further elements of the overall package are progressed, additional approval will be sought.
- 3.6 An effective transport system is integral to peoples' daily lives; it underpins business and commerce; provides access to work, education and training, essential services and leisure activities; and enables people to make the most of opportunities as they arise.
- 3.7 The scheme is strongly aligned with the delivery of the new Vision for Essex.
- Enable inclusive economic growth
  - Help people get the best start and age well
  - Help create great places to grow up, live and work
- 3.8 Investment in the transport network aimed at ensuring the efficient and effective movement of people and goods to boost economic growth create great places to live, work and visit, enable people to live independently, and improve the lives of people using the transport network throughout Essex.

Chelmsford City Growth: Great Waltham to City Centre Cycle Route -Decision to acquire land by Compulsory Purchase Order and the publication of Compulsory Purchase Orders and the making of a Cycle Track Conversion order for affected existing public footpaths.

3.9 Specifically, the Chelmsford City Growth Package enables inclusive economic growth within Chelmsford, identified as a major economic engine within the Essex Organisational Strategy and supports the following strategic priorities;

- Enable Essex to attract and grow large firms in high growth industries. The scheme supports trade, by better connecting key economic centres, especially along major transport corridors, and helping people to travel by public transport, bike and on foot
- Help secure sustainable development and protect the environment. The scheme ensures that growth can be sustainable and accommodated in a way that enhances Essex.
- Facilitate growing communities and new homes; the project enhances transport access to employment, education and training, and essential services including healthcare, retail and leisure facilities to enable participation in everyday life

3.10 The proposal supports the delivery of the Essex Local Transport Plan vision for a transport system that supports sustainable economic growth and helps deliver the best quality of life for the residents of Essex by providing connectivity for Essex communities and international gateways to support sustainable economic growth and regeneration.

3.11 The proposal also supports wider strategic planning for cycling in Essex. The Essex Cycling Strategy sets future plans to get more people cycling in Essex, more safely, more often and covers the whole county in its scope. The purpose of the Strategy is to set out the key elements of a long-term plan that will lead to a significant and sustained increase in cycling in Essex, establishing it in the public's mind as a 'normal' mode of travel, especially for short 'a to b' trips.

3.12 ECC is committed to fulfilling the aims and objectives of its Cycling Strategy in which establishing a coherent, comprehensive and advantageous cycle network in every major urban area, utilising a combination of on-carriageway and off-carriageway cycle facilities is a key strategic objective.

3.13 As part of the Essex Cycling Strategy, Cycling Action Plans have been developed for individual Boroughs and Districts of Essex, including one for the administrative area of Chelmsford City Council. The document provides an opportunity to develop and promote cycling in Chelmsford through improved infrastructure together with the wider promotion of cycling.

3.14 Public consultation events were held throughout Chelmsford both in the spring and summer of 2017. These were attended by residents and local interest groups. The results of the consultation were used to select the schemes taken forward for Local Enterprise Partnership funding. This project was one of the successful schemes taken forward for delivery as part of the overall Chelmsford City Growth Package.

3.15 The appropriate consultation/negotiations with individual owners and attempts to identify the unregistered landowners have been undertaken by ECC's

Chelmsford City Growth: Great Waltham to City Centre Cycle Route -Decision to acquire land by Compulsory Purchase Order and the publication of Compulsory Purchase Orders and the making of a Cycle Track Conversion order for affected existing public footpaths.

independent professional surveyors following the appropriate statutory processes required.

- 3.16 Planning Approval is required to implement this scheme prior to the Compulsory Purchase Orders being pursued. The application has been submitted and approval was granted on 14<sup>th</sup> December 2018 (reference number CC/CHL/39/18).
- 3.17 The proposed conversion of existing public footpaths to cycle track status will be achieved through cycle track conversion orders and will be subject to a simultaneous order process. The public footpaths to become cycle tracks are shown on Appendix E.
- 3.18 Under the Cycle Tracks Regulations 1984 pre-Order consultation is required with a wide range of interested parties. The Regulations define these as (a) one or more organisations representing persons who use the footpath to which the order relates or are likely to be affected by any provisions of the order, unless it appears to the authority that there is no such organisation which can appropriately be consulted; (b) any other local authority, parish council or community council within whose area the said footpath is situated; (c) those statutory undertakers whose operational land is crossed by the said footpath; and (d) the chief officer of police of any police area in which the said footpath is situated. Consultation on the proposed cycle track orders was carried out on 11 February 2019 with responses to be made by 1 March 2019. Details of those consulted, a summary of the responses received and the action to be taken is included at Appendix F. No objection was made to the proposed cycle track order in the consultation exercise and it is not considered that any of the comments received affects the purpose of making the cycle track order as part of the overall scheme.
- 3.19 Where the land crossed by the footpaths to be diverted is agricultural land to which the additional consent requirements in section 3(2) of the Cycle Tracks Act 1984 applies, formal approval has been sought from the landowner. It is recommended that the order is made and pursued to confirmation alongside the land acquisition.

#### **4. Options**

##### **Option 1 - 'Do-nothing'**

- 4.1 Currently there is poor cycle network connectivity between the city centre and the north of the city. Given the pressure on the highway network and increased congestion it is important to promote and encourage people to use more sustainable modes of transport by providing cycle-friendly infrastructure. This link is seen as extremely important in promoting cycling (and walking) between the city centre and one of the most important employment/general destinations within the city (Broomfield Hospital). Also, it is anticipated that the situation will worsen as new development takes place across Chelmsford

Chelmsford City Growth: Great Waltham to City Centre Cycle Route -Decision to acquire land by Compulsory Purchase Order and the publication of Compulsory Purchase Orders and the making of a Cycle Track Conversion order for affected existing public footpaths.

City which will be unable to connect into and expand the sustainable cycling/walking infrastructure. Therefore, in order to support these pressures 'do nothing' is not considered an option.

**Option 2** – Proceed with the route identified and secure delivery by the making of a CPO

- 4.2 This is the preferred option. This scheme has been an aspiration of ECC's for a number of years. The option of off-road provision makes best use of the existing network of paths and rights of way to provide a safe and convenient cycleway corridor away from the busy B1008. The route connects with further existing and proposed routes to improve the overall wider cycle network. Sufficient design development has been undertaken to demonstrate that the scheme is deliverable.

**Option 3** – due to the issues over landownership, revisit the previous alternative on road routes identified and pursue in the alternative.

- 4.3 Alternative routing is not considered to be a viable option due to the limitations of connectivity through existing residential estate roads and the desire to provide a safer route away from the congested main highway corridor. As the unregistered land divides an otherwise uninterrupted corridor there is limited scope for alternative routing which offers the same connectivity and opportunities as the preferred option.

**Option 4** – Abandon the scheme as it is not possible to get agreement from all the owners to move the scheme on at this time

- 4.5 This would result in the same outcome as Option 1.
- 4.6 Not making a CPO at this stage would stop (or delay) the delivery of the scheme. Where existing Public Rights of Way (PROW) are affected, a strategy for their diversion has been agreed with the Essex Highways PROW team to ensure that the remaining network is fit for purpose. Planning permission for the whole of the Phase 1 scheme has been obtained. Where landowners have been identified, negotiations are in progress to secure, where possible, the land required by agreement, leaving only the need to complete the final sections of the route through the CPO powers afforded to the Highway Authority.

## **5. Issues for consideration**

### **Financial implications**

- 5.1 The Chelmsford City Growth strategy programme valued at £15.067m is included in the ECC approved capital programme. The total costs associated with the delivery of the Great Waltham to City Centre Cycle Route estimated at £790,000 can be accommodated within the total budget allocation of £15.067m. No additional funding is required as a result of this decision.

Chelmsford City Growth: Great Waltham to City Centre Cycle Route -Decision to acquire land by Compulsory Purchase Order and the publication of Compulsory Purchase Orders and the making of a Cycle Track Conversion order for affected existing public footpaths.

5.2 The following table summarises the total scheme cost profile and funding sources:

Chelmsford City Growth Scheme	2017/18	2018/19	2019/20	2020/21	Total
	(£m)	(£m)	(£m)	(£m)	(£m)
<b>Total Costs</b>	<b>1.176</b>	<b>2.891</b>	<b>4.500</b>	<b>6.500</b>	<b>15.067</b>
<b>Funding - Local Growth Fund</b>	1.000	2.500	4.000	2.500	10.000
<b>Funding - ECC borrowing</b>	0.176	0.391	0.500	4.000	5.067
<b>Total Funding</b>	<b>1.176</b>	<b>2.891</b>	<b>4.500</b>	<b>6.500</b>	<b>15.067</b>

5.3 SELEP (LGF) approved the funding for Chelmsford City Growth in 2017, therefore this is ring-fenced against the delivery of specific projects, including the Great Waltham to City Centre Cycle Route.

5.4 Compulsory Purchase Orders (CPOs) are to be used to avoid potential delays and abortive costs should land negotiations, which are ongoing, prove unsuccessful.

5.5 Once the cycle route is operational as a highways asset ongoing maintenance costs will be the responsibility of ECC.

### **Legal implications**

5.4 ECC has the power to make a compulsory purchase order for highway purposes in relation to the local road network.

5.5 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.

5.6 It is common practice, and acknowledged in the Ministry of Housing, Communities and Local Government guidance, that negotiations with landowners should sensibly continue alongside a formal CPO process.

5.7 Where land is in unknown ownership CPO provides a method whereby ECC can obtain title to the land without having first to be satisfied as to the seller's title or to settle the amount of compensation so that timely possession of land can be taken.

5.8 The Cycle Tracks Act 1984 enables ECC to convert existing public footpaths to cycle tracks and this is the appropriate way to achieve those changes for

Chelmsford City Growth: Great Waltham to City Centre Cycle Route -Decision to acquire land by Compulsory Purchase Order and the publication of Compulsory Purchase Orders and the making of a Cycle Track Conversion order for affected existing public footpaths.

these parts of the route. Processing will be in accordance with the Act and the applicable Regulations.

## **6. Human Rights and Equality and Diversity implications**

6.1 Paragraph 2 of the Ministry of Housing, Communities and Local Government Guidance in February 2018 states that ‘when making and confirming an order, acquiring authorities and authorising authorities 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.’

6.2 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 European Convention on Human Rights (ECHR)**

6.3 **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”*

6.4 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**

6.5 **Article 8 of the ECHR provides as follows:**



Chelmsford City Growth: Great Waltham to City Centre Cycle Route -Decision to acquire land by Compulsory Purchase Order and the publication of Compulsory Purchase Orders and the making of a Cycle Track Conversion order for affected existing public footpaths.

*“(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”.*

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

6.7 The CPO will be made pursuant to section 239 and 250 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**

6.8 **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”*

6.9 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**

6.10 To the extent that the CPO 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.

6.11 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 at the discretion of the

Chelmsford City Growth: Great Waltham to City Centre Cycle Route -Decision to acquire land by Compulsory Purchase Order and the publication of Compulsory Purchase Orders and the making of a Cycle Track Conversion order for affected existing public footpaths.

confirming authority (the relevant Secretary of State). If the CPO is confirmed then anyone considering that the CPO is invalid as a result of a legal error has a statutory right to go to court to challenge the order.

- 6.12 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.

## **7. The Public Sector Equality Duty**

- 7.1 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.

- 7.2 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).

- 7.3 An equality impact assessment was completed on 18th March 2019 for the identified route and has been included in Appendix G.

- 7.4 The equality impact assessment indicates that the proposals in this report will not have a disproportionately adverse impact on any people with a particular characteristic. The scheme design will comply with all the relevant legislation e.g. standards for accessibility by disabled people, highway design standards, policies and legislation.

## **8. List of appendices**

- Appendix A Scheme Plan
- Appendix B Provisional Plot Plan
- Appendix C Route Plan
- Appendix D Draft Schedule 2 to CPO (table of land and owners) (Confidential)
- Appendix E Cycle Track Order plan
- Appendix F Cycle Track Order Consultation Analysis
- Appendix G Equality Impact Assessment dated 18<sup>th</sup> March 2019

## **9. List of Background papers**

Chelmsford City Growth: Great Waltham to City Centre Cycle Route -Decision to acquire land by Compulsory Purchase Order and the publication of Compulsory Purchase Orders and the making of a Cycle Track Conversion order for affected existing public footpaths.

- Gt Waltham CPO Statement of Reasons
- SELEP Accountability Board Paper dated 23<sup>rd</sup> February 2018

<b>I approve the above recommendations set out above for the reasons set out in the report.</b>	<b>Date</b>
<b>Councillor Kevin Bentley, Deputy Leader of the Council and Cabinet Member for Infrastructure</b>	28.05.19

**In consultation with:**

<b>Role</b>	<b>Date</b>
<b>Andrew Cook, Director of Highways and Transportation.</b>	21.05.19
<b>Executive Director for Corporate and Customer Services (S151 Officer)</b>	20.05.19
<b>Margaret Lee</b>	
<b>Director, Legal and Assurance (Monitoring Officer)</b> Kim Cole on behalf of <b>Paul Turner</b>	03.05.19