

Calderdale MBC

Wards Affected Brighouse

Cabinet 11th March 2024

Clifton Business Park – Resolution in principle to use compulsory purchase powers for the Clifton Link Road

Report of the Director of Regeneration and Strategy

1. Purpose of Report

- 1.1 In January 2018 and March 2020, Cabinet made in principle and in detail decisions respectively in relation to the use of compulsory purchase powers in respect of Clifton Business Park. For the reasons set out herein a revised approach to land acquisition is proposed for the below identified Clifton Link Road ("the Link Road"). In addition to seeking authority to progress negotiations to acquire land and interests to deliver the Link Road, Cabinet's "in principle" support is requested for the use of powers of compulsory acquisition.
- 1.2 Cabinet is also asked to note that a subsequent update report in respect of Clifton Business Park will be submitted for its consideration in the coming months.

2. Need for a decision

- 2.1 Cabinet is requested to pass a resolution affirming its readiness 'in principle' to utilise the Council's compulsory purchase powers and such other powers as are necessary to acquire those interests in land required for the Link Road; and to authorise officers to undertake negotiations for acquisition of necessary land and rights on the basis set out in this report, and to authorise acquisitions by agreement where the use of compulsory purchase powers is contemplated and to approve the purchase price, advance payments and all other compensation payments to affected landowners within an approved funding envelope.
- 2.2 For the avoidance of doubt, officers will continue to seek acquisition by agreement of interests in land required for Clifton Business Park in addition to and notwithstanding the proposals and recommendations in respect of the Link Road set out herein.

3. Recommendation

It is recommended that Cabinet:

- 3.1 Notes the changes in circumstance that have occurred since the previous resolutions to use compulsory purchase powers in respect of Clifton Business Park.
- 3.2 Approves the principle of pursuing CPO using powers contained in Part XII of the Highways Act 1980 to acquire the land and rights necessary to deliver the Link Road.

- 3.3 Approves the principle of making a Side Roads Order pursuant to sections 14 and 125 of the Highways Act 1980 as required.
- 3.4 Authorises the Head of Legal & Democratic Services, having consulted the relevant Portfolio Holder(s), to take all steps necessary to prepare to make a CPO including (but not limited to) the preparation of all documents required to support the CPO process, the service of requisitions for information to determine interests in land and authorising the right to enter and survey land in connection with a proposal to acquire an interest.
- 3.5 Authorises the Director of Regeneration and Strategy, the Head of Legal and Democratic Services and the Director for Resources and Transformation, having consulted the respective Portfolio Holders, to progress the necessary legal agreements.
- 3.6 Confirms the Council's intention to proceed with land acquisition by agreement, and in principle support for the use of compulsory purchase powers, in order to deliver the Link Road; and that such approach supersedes that set out in the prior decisions of January 2018 and March 2022 so far as they apply to the Link Road.
- 3.7 Notes that further reports will be presented to Cabinet to provide an update on progress as required, including, if necessary, a detailed report addressing the legal and policy requirements and detailed justification for compulsory acquisition and to request the authorisation to pursue the making of a Compulsory Purchase Order (CPO) as necessary.

4. Background

- 4.1 In January 2018, the Council's Cabinet made the decision to seek to acquire land required for the Business Park scheme and resolved in principle its readiness to use compulsory purchase powers if necessary.
- 4.2 In March 2020, the Council's Cabinet subsequently considered a detailed report addressing the need for compulsory acquisition and resolved to make a Compulsory Purchase Order (CPO) and a Sides Road Order (SRO) in order to support delivery of the Business Park.
- 4.3 Progress with the Business Park scheme following the 2020 resolution has proved disappointing and it has not been considered appropriate to proceed with the making of a CPO under the Planning Acts as intended.
- 4.4 Immediately following that decision the COVID-19 virus reached the UK and cabinet will be familiar with the implications of Lockdown on the delivery of Council functions and more generally.
- 4.5 Following a review of major schemes the Council reaffirmed that Clifton Business park was a key priority and it subject to a Round 1 Levelling Up Fund bid (such fund being launched on 27 Oct 2021. The availability of Central Government grant funding was an entirely appropriate avenue to explore given if successful it would have meant a reduction in risk for ratepayers of the Borough. Unfortunately that bid was not successful.
- 4.6 A further round of LUF required submissions by August 2022. A further bid was submitted but again was unfortunately unsuccessful.
- 4.7 Given the financial demands on local authorities it is considered entirely appropriate to have pursued LUF funding, that being a responsible strategy of a local authority with statutory duties seeking both to effect economic development and meet all other responsibilities including to deliver services to the vulnerable members of its communities.
- 4.8 Notwithstanding the above, the Council has sought to acquire by agreement the necessary interests in land required for the delivery of the Business Park. Most particularly in respect of the principal landowner. A written conditional offer, based on an appropriate market assessment, was made to the principal landowner in early 2019. In May 2019, the landowner responded with a counter offer which the Council was not able to accept.
- 4.9 Since then, the Council has continued to correspond with the principal landowner in an attempt to acquire the site by agreement. However it has not been possible to reach agreement on terms that are acceptable to both parties and legally compliant.
- 4.10 The principal landowner has in turn expressed its intention to submit proposals to the Council for a partnership arrangement that is compliant with Public Procurement and Subsidy Control Regulations. This was confirmed most recently at an in person meeting at the Council's offices in November 2022. However to date, no such proposal has been received.

- 4.11 In the light of the unavailability of Central Government funding a revised approach to Business Park delivery strategy is being undertaken with greater focus on melding public sector investment with specialist commercial developers experience. Cabinet will be aware of the tender process launched last summer. It is presently anticipated that will result in the appointment of a preferred developer in the next few months. That revised strategy also envisages delivery of the Link Road by the Council. This reflects not only the importance of the Link Road to the Business Park but also to the wider highway network as set out at section 5 below.
- 4.12 The Council is cognisant of its duties as an acquiring authority. Having regard to recent Secretary of State decisions in which the tardiness in making a CPO has been both subject to criticism and a reason for non-confirmation of an Order, it is necessary to revisit and revise the basis upon which acquisition of interests in land is to be undertaken. Accordingly the revised approach to acquisition in respect of the Link Road and delivery of the same is signposted in this report which requests in principle preparedness to make a Highways CPO if necessary. An update report in respect of land acquisition for the Clifton Business Park will be submitted to cabinet in the coming months.

5. The Link Road

- 5.1 A principal function of the Link Road is in relation to Clifton Business Park which is a regionally significant employment site that is estimated to provide 1,300 permanent jobs by 2035, and would be one of the Leeds City Region Enterprise Zones, supported by Leeds City region Enterprise Partnership (LEP) and WYCA. 2 Clifton Business Park will deliver a significant proportion of the Borough's Employment Land, in a key strategic site adjacent to the M62 at Brighouse. The site benefits from outline planning permission. Detailed access proposals comprising the Link Road are however already approved. Cabinet is familiar with the Business Park proposal. A principal purpose of the Link Road is to effect access to and enable delivery of the Business Park.
- 5.2 The Link Road additionally will achieve other purposes and thereby contribute to delivery of policy objectives and improvement of local highway network capacity and performance:
- It will provide a key part of the supporting infrastructure for the Thornhills Garden Community, located immediately to the north west of the site
 - In so doing it will assist in providing active and sustainable travel connections which form a key policy objective of the new Garden Communities
 - By providing a direct route between Clifton Common (A643) and Wakefield Road (A644) the Link Road will assist in alleviating congestion in Brighouse Town Centre and will contribute to the diversion away from Brighouse of heavy goods vehicles from the adjacent Armytage Road employment area
 - It will complement and assist in delivering the wider benefits of the A641 Bradford – Brighouse – Huddersfield Corridor improvement scheme, including improving congestion and air quality

- It will contribute positively to the wider economic growth in South East Calderdale
- The functions of the Link Road have been integrated into planning and highways proposals, for example by means of Link Road baseline assumptions applied within the traffic modelling for the A641 scheme and otherwise

- 5.3 To date delivery of the Link Road has been addressed primarily in terms of its relationship with Clifton Business Park. That remains demonstrably important given the significance of the Business Park for purposes of economic development. However the above other functions and purposes of the Link Road are also considered to be of such significance so as to warrant earlier delivery of the Link that would appear likely to be the case than if it were tied to delivery of the Business Park.
- 5.4 To briefly summarise, the Council has previously taken decisions in respect of the use of compulsory purchase powers with a view to delivering Clifton Business Park. The use of compulsory purchase was considered necessary in order to unlock this key development site that would in all likelihood otherwise remain undeveloped, and thereby improve the economic well-being of the local area and producing social/economic benefits, to deliver the WYCA's economic plan and also to bring benefits to the transport network.
- 5.5 The Link Road has from the outset been included within the Clifton Business Park proposal as forming a new access road between A643 (Clifton Common) and A644 (Wakefield Road). As noted above such new road is referred to in this report as the Clifton Link Road reflecting its wider functions..
- 5.6 For the reasons set out in this report it is considered necessary to make every effort to achieve timely delivery of the Link Road and therefore it is no longer intended to rely upon those prior decisions in respect of the Link Road in relation to bringing forward site acquisition by agreement and, if necessary, compulsory purchase measures. Rather a revised approach whereby the Clifton Link Road is brought forward in advance of the Business Park is proposed and the focus of negotiations acquisitions will be to effect delivery of the Link Road. A plan identifying the land required is attached. Engagement with landowners will accordingly be undertaken on this revised basis.
- 5.7 That said, and as noted earlier in this report, for the avoidance of doubt, officers will continue to seek acquisition by agreement of interests in land required for Clifton Business Park in addition to and notwithstanding the proposals and recommendations in respect of the Link Road set out herein.

6. Options Considered

Option 1 – Agree to the “in principle” use of CPO powers to acquire land for the delivery of the Clifton Business Park Link Road

- 6.1 This is the recommended option. Designs have already been progressed as part of the wider proposals for the Clifton Business Park, however, some further design works will be required to agree the scope of adjacent retaining structures, civils

works and any future proofing works that might be required to facilitate the wider scheme. Given the importance of the Link Road in relation to adjacent developments, it is therefore proposed that this element of the project is progressed as soon as practicable and options for an early works package are explored.

Option 2 – Cabinet does not authorise the use of ‘in principle’ Compulsory Purchase Order powers

- 6.2 If steps to acquire land and interests necessary for the delivery of the are not taken and the Link Road is not delivered, then the following impacts are anticipated:
- Assumptions for the A641 would need to be re-set, essentially requiring traffic and transport modelling for Brighouse to be re-started. This could require wholesale re-design of the interventions proposed around Brighouse with significant impacts on the project cost and programme.
 - Further pressure would be felt on the A643/A644 junction, which is already over capacity, as a result of the development at Thornhills. Based on previous modelling outputs, a 3-4 minute delay at this junction would be anticipated.

Option 3 – Attempt to secure all necessary land interests by negotiation in the absence of an ‘in principle’ resolution to use CPO powers

- 6.3 The Council has attempted to negotiate with the current landowner for a significant period of time, with no success. Without the principle of the use of CPO powers it is anticipated that negotiations will continue to be unsuccessful and the Clifton Link Road will not be delivered.

7. Financial Implications

- 7.1 The Council has applied for Employment Land Accelerator Funding from West Yorkshire Combined Authority which will support the costs of valuation and legal advice required to follow the steps towards land acquisition as set out in this report.
- 7.2 The Council is able to demonstrate that the Clifton Link Road can be delivered and is fully funded. Capital funding for the road will consist of prudential borrowing secured against future Roof Tax revenue from the Garden Communities, plus a National Productivity Infrastructure Fund grant of £4.45m which has already been secured.
- 7.3 On 12 February 2024 Cabinet received a detailed report from the Directors of Resources and Transformation and of Regeneration and Strategy respectively in respect of funding to support the delivery of development in Southeast Calderdale. That detailed and wide-ranging report provides detailed context in terms of funding delivery. Cabinet recommended this report to Council for approval on 14 February 2024.
- 7.4 At its meeting on 14 February 2024 Council agreed to the proposed investment and to incorporate the relevant sums into the Council’s overall Capital Programme. This funding includes an allocation of £20,862,567 to deliver infrastructure works through the A641 Improvement Scheme and the Link Road.

- 7.5 The cost to deliver the Link Road is £12.2m, which will be funded through the £4.45m National Productivity Investment Fund and the remainder from the Southeast Calderdale funding package.

8. Legal Implications

- 8.1 Any land required in order to deliver the Link Road, which cannot be acquired by negotiation with landowners, is likely to require a compulsory purchase order. In parallel with ongoing negotiation and in order to ensure the timely use of a CPO if necessary, relevant documentation will be prepared. If a CPO is required, further approval will be sought from Cabinet to make and implement that order.
- 8.2 As the delivery of the Link Road involves the compulsory purchase of land to facilitate highway improvements, it is proposed to rely on the use of Highway CPO powers under Part XII of the Highways Act 1980 which include appropriate specific powers. These include sections 239 (improvement of an existing highway and/or land to become a highway), 240 (acquisition of land in connection with construction and improvement of highways), 246 (power to acquire land adjacent to the highway and mitigating the effects of constructing or improving highways), section 250 (land acquisition powers to extend to creation as well as acquisition of rights), and section 260 (clearance of title to land acquired for statutory purposes) of the Highways Act 1980.
- 8.3 In due course if a CPO is proposed to made a detailed report will be submitted to Cabinet addressing the relevant legal and policy tests which must be met if compulsory acquisition is to be justified, including that there is a compelling case in the public interest for the compulsory acquisition.
- 8.4 In addition to the legal tests that will need to be satisfied if compulsory acquisition is to be justified, it will be necessary for the Council to have regard to guidance set out in Compulsory Purchase Process and the Crichel Down Rules and particularly to the Department of Transport Local Authority Circular 2/97.

9. Human Resources and Organisation Development Implications

- 9.1 None

10. Consultation

- 10.1 Negotiations over the purchase of the relevant land has been ongoing between the Council and landowners for a significant period of time as part of the acquisition strategy relating to the Business Park.
- 10.2 Upon approval of this report Officers will seek to acquire necessary interests in land by agreement and relevant landowners will be informed of the revised approach to the Link Road.

11. Environment, Health and Economic Implications

- 11.1 Delivery of the Clifton Link Road would help to reduce pressure felt on the A643/A644 junction, which is already over capacity.

- 11.2 Early construction of the link road would support the wider growth ambitions for South East Calderdale, and in particular the Thornhills Garden Community.

12. Equality and Diversity

- 12.1 The CPO Guidance states that "a Compulsory Purchase Order should only be made where there is a compelling case in the public interest. In addition, the 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. Particular consideration should be given to the provision 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."

13. Summary and Recommendations

It is recommended that Cabinet:

- 13.1 Notes the changes in circumstance that have occurred since the previous resolutions to use compulsory purchase powers in respect of Clifton Business Park
- 13.2 Approves the principle of pursuing CPO using powers contained in Part XII of the Highways Act 1980 to acquire the land and rights necessary to deliver the Link Road.
- 13.3 Approves the principle of making a Side Roads Order pursuant to sections 14 and 125 of the Highways Act 1980 as required.
- 13.4 Authorises the Head of Legal & Democratic Services in conjunction with the relevant Portfolio Holder(s) to take all steps necessary to prepare to make a CPO including (but not limited to) the preparation of all documents required to support the CPO process, the service of requisitions for information to determine interests in land and authorising the right to enter and survey land in connection with a proposal to acquire an interest.
- 13.5 Authorises the Director of Regeneration and Strategy, the Head of Legal and Democratic Services and the Director for Resources and Transformation, in consultation with respective Portfolio Holders, to progress the necessary legal agreements.
- 13.6 Confirms the Council's intention to proceed with land acquisition by agreement, and in principle support for the use of compulsory purchase powers, in order to deliver the Link Road; and that such approach supersedes that set out in the prior decisions of January 2018 and March 2022 in respect of the Link Road.
- 13.7 Notes that further reports will be presented to Cabinet to provide an update on progress as required, including, if necessary, to request the authorisation to pursue the making of a Compulsory Purchase Order (CPO) as necessary.

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The documents used in the preparation of this report are:

- 1.
- 2.
- 3.

The documents are available for inspection at: