

NORTH SOMERSET COUNCIL DECISION

DECISION OF: DIRECTOR OF PLACE

IN CONSULTATION WITH: DIRECTOR OF CORPORATE SERVICES AND THE ASSISTANT DIRECTOR LEGAL AND GOVERNANCE



DECISION NO: 23/24 DP 455

SUBJECT: ACQUISITION OF ALL LAND AND RIGHTS CONTAINED WITHIN THE CPO FOR BANWELL BYPASS (INCLUDING SERVICE OF A GENERAL VESTING DECLARATION, NOTICE TO TREAT AND NOTICE OF ENTRY)

KEY DECISION: YES

REASON: The value exceeds £500k and the decision will have a significant impact on two or more wards.

BACKGROUND:

The following Council decisions precede this report:

EXE13 sought authorisation of the Executive in April 2021 to allow all steps necessary to prepare the making of a CPO for the scheme and to enter into voluntary agreements with landowners for the acquisitions of land and rights for the delivery of Banwell bypass.

Decision COU37 followed in July 2022 and authorised the making of CPO 1 which addressed all land and rights to be acquired for the scheme.

A further decision followed in February 2023, decision COU112 which authorised the making and serving of CPO 2 to acquire additional environmental mitigation land and rights required for the scheme.

Decisions COU 37 and COU 112 delegated authority to the Director of Place and the Assistant Director Legal & Governance, subject to confirmation of the CPO, to acquire land and rights in the CPO land, including service of a general vesting declaration, notice to treat or notice of entry. This decision is sought in reliance on those existing authorities.

Following a successful public inquiry held in July 2023, on Monday 29 January 2024 the Council received confirmation from the Secretary of State that the Orders have been approved.

Following confirmation of the Orders, confirmation notices must be served on all parties with an interest that were recorded in the Book of Reference. Notices must be advertised in a local newspaper (Weston Mercury) and site notices must be erected. Further notices will follow to all parties to confirm that the CPO will proceed. The Council has already taken that

action to bring the Orders into operation.

Now that both CPO1 and CPO2 have been confirmed, once the Orders come into operation the Council can acquire all the land and rights required to deliver the Banwell Bypass scheme. It must first execute and serve the necessary instruments (a general vesting declaration (GVD) or Notice to Treat/Notice of Entry), which is the purpose of this decision.

The GVD must be executed within 3 years of the Orders becoming operational. GVD plans must be prepared identifying all land that is to be acquired under the GVD.

The execution and service of Notice to Treat/Notice of Entry is an alternative means of compulsory acquisition which has strategic benefits in narrow circumstances, and which must be used to acquire certain minor interests in land. The Council will use this approach where necessary and will take appropriate advice on strategy.

This decision is seeking approval to proceed with the process of executing and serving the instruments required to compulsorily purchase the land. In taking this decision, the Council is effect authorising the Banwell Bypass scheme to proceed through the acquisition of the land and rights required and the payment of all related compensation.

DECISION:

1. Authorise, pursuant to resolutions (h) and (j) of decision COU37 and resolutions (f) and (g) of COU112, the execution and service of any one or more general vesting declarations, notices to treat and/or notices of entry including authority to agree with landowners to delay the vesting date under any general vesting declaration by agreement with those with an interest in land in reliance on powers contained in s.186 of the Levelling Up and Regeneration Act 2023.
2. To negotiate, settle and pay all necessary compensation and professional fees (including interim payments) up to £500,000 for each land owner/ those with other property rights in the CPO land and subject to the limit of the scheme budget for land acquisition, either as agreed with landowners (or those with other property rights affected by the CPOs) or as determined by the Lands Chamber of the Upper Tribunal in relation to the acquisition of land or rights forming part of either the CPO1 land or CPO2 land in accordance with the Land Compensation Act 1961, the Compulsory Purchase Act 1965 and the Land Compensation Act 1973 provisions in force at the relevant time and the body of case law relevant to the assessment of compensation.
3. To pay advance compensation (90% of the Council's estimate of the total compensation payable) to any person with an interest in the CPO land in accordance with the requirements and procedures of the compulsory purchase law.

REASONS:

Whilst it is favourable to enter into agreement with landowners to acquire the land needed for the scheme, there are particular land parcels that cannot be secured without the reliance of compulsory purchasing. The construction programme and funding milestones for the Banwell Bypass requires that land is secure as soon as possible.

OPTIONS CONSIDERED:

Negotiations with landowners commenced in 2020 following confirmation of the HIF funding. Whilst progress has been made to negotiate voluntary agreements the Council have not succeeded in securing these in advance of the CPO. The Grant Determination Agreement

(GDA) required vacant possession to be secured and evidenced for funding to be drawn upon. If the compulsory purchase powers are not relied upon, it is likely that the scheme would not proceed. The Council will continue to negotiate to reach agreement voluntarily where practical.

FINANCIAL IMPLICATIONS:

This decision only seeks authority to make payments up to (but not over) £500,000 and where within the overall scheme budget.

Costs

Property cost estimates have been prepared by the Council's advisors to inform the likely costs associated with acquisition of land. These consider not only the land value, benchmarked against local comparables but notes various heads of compensation including injurious affection, disturbance, and basic loss payment.

The latest review of the property cost estimates was undertaken in September 2023 and allowed for the budgeted costs for land taken for the scheme for £4,766,324.

The full schedule of property cost estimates and relevant payments is within the Property Cost Estimates document (PCE) (confidential and exempt).

The PCE will be revised in March 2024.

Funding

The GDA signed between North Somerset Council and Homes England in August 2020 allocated £65.3m of funding from the Housing Infrastructure Fund to build a bypass for the village of Banwell, fund online improvement to the surrounding highway network and improve the area's utility network.

Following a funding review in early 2023 a further £12m was sought from Homes England to be match funded by £11.9m of North Somerset's S106 and CIL reserves. Both additional funding amounts were granted bringing the total budget to £90.6m

The land assembly budget was scheduled to be drawn down as part of stage 1 funding (design and planning works) with conditionality on the stage 2 (construction) funding being drawn upon once the land assembly was complete. As the scheme has evolved, this milestone has been revised to reflect a realistic timeframe for when the land will be fully assembled.

Costs relating to land assembly will be charged to cost centre KDT702.

LEGAL POWERS AND IMPLICATIONS

The land to be acquired by the Council is required for the following purposes under the relevant sections of the Highways Act 1980:

- (a) Section 239: for the construction and improvement of a highway which is to be a highway maintainable at the public expense.
- (b) Section 240: for the improvement of a highway and to acquire land necessary for implementing the Side Roads Orders.

(c) Section 246: for the mitigation of any adverse effect which the existence or use of a highway constructed or improved has or will have on the surrounding of the highway.

In addition, the Council may, under section 250 of the Highways Act 1980, provide for the creation of new rights over land as well as for the acquisition of rights already in existence.

Under both the GVD and Notice to Treat processes, landowners must be given a minimum of 3 months' notice before the Council takes possession.

The Council's legal advisers have confirmed that a GVD will be used to acquire the vast majority of the land and rights. As a process, this provides the most certainty, is the more cost efficient and has the added benefit of being able to cleanse title (or override) third party interests in land.

It is standard practice for GVDs to be executed and served in different phases where staged acquisition is beneficial for either the acquiring authority or the affected landowners. The Council will consider taking that approach following further discussions with its advisers.

New powers became available in February 2023 through s.186 of the Levelling Up and Regeneration Act 2023 which permit the acquiring authority to agree with landowners to delay the vesting date following service of the GVD and the Council may seek to rely on those provisions.

Payment of 90% of the estimated compensation (or agreed compensation) payable to those with an interest in the CPO land must be made where requested by a claimant. This is required under a formal process set out in s.52 of the Land Compensation Act 1973. The payment must be made on the later of (i) the day that a GVD is executed or Notice of Entry is given (as relevant to the particular claimant) and (ii) 2 months of the request being made. In short, advance payments must be made when claimed where the compulsory acquisition has been formally authorised.

Landowners are only now being given the opportunity to request advance payments, and so in reality any advance payments would fall due within the 2 months immediately following the execution of the GVD (or Notice of Entry given) based on the Council's intended programme progressing with the compulsory acquisition of land. Any balancing payment (i.e. the remaining 10% of the estimated sum subject to agreement of the precise sum) is payable when the Council takes possession. If compensation is not agreed the claimant may make a reference to the Upper Tribunal (Lands Chamber).

CLIMATE CHANGE AND ENVIRONMENTAL IMPLICATIONS

There are no climate change or environmental implications which stem directly from this decision.

Detailed assessment of climate and environment has been assessed through the Environmental Statement that was submitted to the Local Planning Authority in July 2022 as part of the wider planning application for the scheme.

CONSULTATION

Extensive consultation has been undertaken with the public, statutory bodies and other key

stakeholders throughout the evolution of the scheme. Summaries of the main consultation can be found in section 4 of background document COU37.

RISK MANAGEMENT

Many of the risks associated with the CPO have been superseded now that the Orders have been confirmed. The remaining risks are associated with the following:

The Council intends to exercise its compulsory purchase powers before the statutory challenge period for the Orders expires. Third parties can challenge the CPO in the High Court within that period. The challenge period runs for 6 weeks following the Orders coming into effect upon publication of the confirmation notices. The challenge period will end on the 21st March 2024. There is risk with taking this approach because, if powers are exercised and a challenge is subsequently brought, it could invalidate actions taken by the Council and result in abortive costs and delay. However, the programme does not allow the Council to delay progress during the challenge period. The Council has taken legal advice on the Secretary of State's decision and there are no obvious matters which have the potential to give rise to a challenge.

The execution and service of a GVD and/or Notice to Treat/Notice of Entry is a highly technical process with strict procedural requirements. The Council is mitigating the risk of any error which could invalidate any action taken by relying on its external legal advisers to undertake the majority of this work.

However, the timely use of compulsory purchase powers now that the Orders have been confirmed is itself a key risk management action due to tight programme and funding milestones.

EQUALITY IMPLICATIONS

Have you undertaken an Equality Impact Assessment? Yes

An Equality Impact Assessment (EqIA) was undertaken for the Scheme and will continue to be reviewed through the duration of the scheme. None of the impacts identified in the EqIA relate to the CPO or land acquisition. There are therefore no equality implications directly associated with the subject matter of this report.

CORPORATE IMPLICATIONS

The bypass and its associated online improvements support the Corporate Plan objectives and priorities, specifically the priority of a Thriving and Sustainable Place.

The scheme is interlinked with the Council's emerging Local Plan as the bypass unlocks land identified for future housing allocation.

APPENDICES

CPO decision letter

BACKGROUND PAPERS

EXE13 April 2021

COU37 July 2022

COU112 October 2022

Property Cost Estimates document (PCE)

SIGNATORIES:

DECISION MAKER(S):

Signed:  Director of Place

Date: 28 February 2024

In consultation with

Signed:  Director of Corporate Services

Date: 28 February 2024

Signed:  Assistant Director Legal and Governance

Date: 28 February 2024