

Divisions Affected - Eynsham

CABINET
29th November 2022

HIF2 Update

Report by Director of Transport & Infrastructure

RECOMMENDATION

1. **The Cabinet is RECOMMENDED to;**
 - a) Approve Officers recommendations that The Oxfordshire County Council (Highways Infrastructure - A40 HIF2 Smart Corridor (Hill Farm to Dukes Cut)) Compulsory Purchase Order 2022 (“the CPO”) and The Oxfordshire County Council (Highways Infrastructure - A40 HIF2 Smart Corridor (Hill Farm to Dukes Cut)) (Side Roads) Order 2022 (“the SRO”) must be withdrawn from the ongoing statutory process to allow time to further review the scheme.
 - b) Authorise the Director of Law & Governance to write to the Secretary of State for Transport to formally withdraw The Oxfordshire County Council (Highways Infrastructure – A40 HIF2 Smart Corridor (Hill Farm to Dukes Cut)) (Side Roads) Order 2022 (“the SRO”) and The Oxfordshire County Council (Highways Infrastructure - A40 HIF2 Smart Corridor (Hill Farm to Dukes Cut)) Compulsory Purchase Order 2022 (“the CPO”) (including the related Order Maps, Plans, Schedules and Joint Statement of Reasons) and noting that this will result in a formal non-confirmation decision from the Secretary of State;
 - c) To authorise the Director of Law and Governance to include in the letter to the Secretary of State that it is not considered that any objections to the current Orders can carry to any fresh orders as the timescale for fresh orders is imprecise at this stage, and because it is unclear whether the amended proposal in fresh orders might attract those same objections, and to authorise the settlement of any professional fees that may have been incurred by objectors to the Orders in relation to the production of such objections.
 - d) As soon as the CPO and the SRO have received a non-confirmation decision from the Secretary of State, to authorise the Director of Law & Governance to comply with all associated requirements in respect of personal, site and press notices of non-confirmation and to take all other

relevant actions required thereon to ensure the withdrawal of the CPO and the SRO.

Executive Summary

2. The A40 HIF2 Smart Corridor Scheme (hereafter referred to as the HIF2 Scheme) is a Housing Infrastructure Fund funded highway and transport improvement scheme that includes three key highway enhancement elements, as follows:
 - (a) A40 Dual Carriageway Extension from east of Witney to Eynsham Park and Ride Site;
 - (b) A40 Integrated Bus Lane (Between Eynsham Park and Ride Site and Duke's Cut Bridges);
 - (c) A40 Duke's Cut Bridge Works.
3. A report subsequently approved at the April 2022 Cabinet approved the making of a CPO and SRO and submission to the Secretary of State for Transport for the HIF2 Scheme. The orders have since been submitted and impacted parties notified. Objections to the scheme were received and the Secretary of State for Transport has subsequently sent its relevant date letter, which requires the Council to file a Statement of Case in support of the orders by 2 December 2022.
4. The Council remains committed to delivering the HIF2 Scheme. As part of the ongoing delivery of the HIF2 A40 Programme and in light of the global inflationary pressures being experienced in all sectors, a detailed review has been undertaken of the HIF2 Scheme. As a result of this review, cost pressures have been identified that result in the HIF2 Scheme exceeding its current budget.
5. This has made it necessary to obtain Cabinet approval to withdraw the current CPO and SRO from the ongoing statutory process to allow further time to review the scheme in detail and consider mitigations to these cost pressures. This action is required as a matter of procedure as the Council cannot continue to promote the current orders in light of the lack of ability to satisfy the statutory requirement for the scheme to be deliverable, noting that there is a financial impediment to its delivery.
6. Given that timescales for fresh orders is currently imprecise and it is also not clear at this stage whether fresh orders might attract the same objections, the Cabinet is asked to approve the recommendation that the Secretary of State for Transport be advised that we do not expect any objections to the current Orders should carry to the fresh Orders. An update will be brought to Cabinet in early in 2023.

Exempt Information

7. This report is not confidential or exempt.

Rationale for recommendation

8. The primary focus of the HIF2 Scheme is the provision of additional highway, public transport, active travel capacity and connectivity along the A40 to encourage modal shift and enable more sustainable and active forms of travel. This will mitigate the impact of increased travel demand generated by planned housing growth, whilst helping the Council to meet its zero carbon transport network ambitions and promote wider health and place shaping benefits in line with the Council's corporate priorities.
9. A report subsequently approved at April 2022 Cabinet (Forward plan reference 2022/044) approved the making of a CPO and SRO for the HIF2 Scheme and submission for confirmation to the Secretary of State for Transport. Following approval, Orders were subsequently submitted to the Secretary of State on 3 August 2022. The Secretary of State subsequently consulted on the orders with the objection period ending on 14 September 2022. As objections to the scheme have been received, the Secretary of State subsequently released a relevant date letter on 21 October 2022, which has also been sent to objectors. This is the letter that identifies that the Secretary of State intends to hold a local Public Inquiry into the Orders and requires the Council to file its Statement of Case in support of the Orders by the 2 December 2022.
10. As part of the ongoing delivery of the HIF2 A40 Programme and, in light of the global inflationary pressures being experienced in all sectors, a detailed review has been undertaken of the scheme. As a result of this review, cost pressures have been identified that result in the scheme cost exceeding the current budget. This has made it necessary to obtain Cabinet approval to withdraw the CPO and SRO from the ongoing statutory process to allow further time to review the scheme in detail and consider mitigations to these cost pressures.
11. The Council is committed to delivering the HIF2 A40 Programme and is reviewing the scheme and the mitigations to these cost pressures. It is not known what the implications will be for the scheme at this stage, although the Council is working this through with funding partners as quickly as possible. The project will return to provide an update to Cabinet in early 2023.
12. As part statutory criteria for promoting a scheme, the Council must be able to satisfy the Secretary of State that the scheme is deliverable and viable, and that there are no impediments to that delivery, including in financial terms. As such, the scheme cannot progress further through the statutory process until the budgetary issues have been resolved as there would be an obvious financial impediment to delivery.
13. The Council therefore has no choice but to withdraw the current orders from the statutory process. The Cabinet is asked to approve this request and any required actions to complete the withdrawal of the current set of orders and their subsequent non-confirmation.

Corporate Policies and Priorities

14. The HIF2 Scheme will take into account the Council's current corporate policies and priorities in its review.

Financial Implications

15. The funding for HIF2 is provided by Homes England, which remains at £106,756,836. Any revised scheme proposals that are brought forward at this stage will be within this funding envelope. Costs incurred so far on land acquisition (staffing and scheme) fall within current budget.
16. In withdrawing the Orders, the Council may be liable for any abortive costs that objectors have incurred in submitting objections to the Orders. This can often be avoided if the objections could be equally utilised in relation to new orders, but as the timescale for new orders is imprecise and it is unclear whether new orders might attract those same objections, this is a risk. This may result in unfunded cost pressures, which will need to be managed within the HIF2 programme.

Comments checked by: Lorna Baxter, Director of Finance
Lorna.Baxter@Oxfordshire.gov.uk

Legal Implications

17. Legal advice has been sought and provided regarding the withdrawal of the CPO and the SRO. As the Orders cannot be paused without knowing whether the HIF2 scheme will continue on the same basis as currently promoted, and as the current orders are not able to satisfy the statutory criteria for deliverability, the only course of action that can be taken at this stage is to withdraw the Orders and to submit fresh orders at the appropriate time. The timing for the withdrawal is further exacerbated by the fact that the Secretary of State has issued a relevant date letter, meaning that the Council now has to undertake the next stage of the formal Inquiry process by 2 December.
18. The planning strategy to secure full planning permission for the entirety of the HIF2 scheme remains unchanged at the time of writing but is undergoing careful review in the context of this decision.

Comments checked by: Jennifer Crouch Jennifer Crouch, Principal Solicitor
Jennifer.Crouch@Oxfordshire.gov.uk

Staff Implications

19. Specialist legal and property advisors are already engaged to provide support to the scheme development, Statutory Blight, Highways CPO and other such statutory processes to limit the potential for future challenge to an absolute

minimum. There are no new or additional staff implications as a result of this report.

Equality & Inclusion Implications

20. The equalities implications of the HIF2 Scheme have been assessed robustly through the design development stages of the scheme and is being actively considered in the current scheme review. The Public Sector Equality Duty (PSED), to which the County Council is also subject, places additional obligations on public sector bodies to eliminate discrimination, advance equality of opportunity and foster good relations.
21. Reviewing the ECIA and the County Council's PSED is a continuous process and will be core to the process continuing throughout the subsequent stages of scheme development.
22. Any proposed changes to the scheme as a result of this review will be supported by an up-to-date Equalities Impact Assessment as part of the Equalities and Climate Impact Assessment (ECIA).

Sustainability Implications

23. The HIF2 Scheme is designed to promote sustainable modes of travel for access into Oxford by commuting traffic by modal shift away from the private vehicle and on to public transport or by walking and cycling. In reducing traffic congestion levels this has positive impacts on air quality and carbon emissions. The sustainability implications will be core to the project review along with updates to assessments to meet its climate and ecological commitments.
24. Any proposed changes to the scheme as a result of this review will be supported by an up-to-date Climate Impact Assessment as part of the ECIA.

Risk Management

25. The risks continue to be managed and monitored on an ongoing basis as part of the overall governance of the HIF2 Scheme.
26. Risks identified as part of this decision relate to financial risks identified in paragraphs 15 and 16 of this report. Risks relating to the planning strategy as identified in paragraph 18. Risks related to statutory blight are unchanged from previous decisions made on the HIF2 Scheme.

Consultations

27. All parties that were originally served with the CPO and SRO documentation and therefore impacted by the decision have been made aware of the intention to bring this matter to Cabinet prior to the publication of this report and it is intended that a further letter will be sent to inform them of the Cabinet decision.
28. Once the withdrawal of the Orders has occurred, the Secretary of State will provide the Council with a non-confirmation decision (this may take a few weeks), which will need to be appropriately publicised and also sent out to all those parties that were originally served with the CPO and SRO documentation, as well as being erected on site and placed in the local press and London Gazette (SRO only for the London Gazette).

Owen Jenkins, Report by Director of Transport & Infrastructure

Annex: Nil

Background papers: Nil

Contact Officer: Owen Jenkins
Director of Transport and Infrastructure
07903646162

November 2022