

Divisions Affected – Eynsham, Witney (North and East)

CABINET

May 2023

A40 ACCESS TO WITNEY

COMPULSORY PURCHASE ORDER AND SIDE ROADS ORDER

Report by Corporate Director Environment and Place

RECOMMENDATION

1. The Cabinet is **RECOMMENDED** to:
 - a) Confirm that the acquisition of the land identified on the map attached to this report (Annex B) (“the Order Map”) being the map accompanying The Oxfordshire County Council (Highways Infrastructure – A40 Access to Witney) Compulsory Purchase Order 2023 (“the CPO”) is necessary for highway purposes;
 - b) Approve the CPO, the Order Map, The Oxfordshire County Council (Highways Infrastructure – A40 Access to Witney) (Side Roads) Order 2023 (“the SRO”), the plan accompanying the SRO (“SRO Plan”) all substantially in the form annexed to this report but to delegate to the Director of Transport and Infrastructure following consultation with the Director of Law & Governance, authority to modify them as necessary;
 - c) Authorise the Director of Law & Governance to make The Oxfordshire County Council (Highways Infrastructure – A40 Access to Witney) Compulsory Purchase Order 2023 pursuant to Sections 239, 240, 246 and 260 of the Highways Act 1980 (as amended) and Part II and III of Schedule 2 and Schedule 3 to the Acquisition of Land Act 1981 for the purpose of acquiring the land and interests shown on the Order Map and described in the Schedule to the CPO (or such lesser area of land should this in his opinion be appropriate) to facilitate the improvement of the A40 by the construction of two new west facing slip roads and other necessary related highway improvement works and mitigation on such land and to affix the Common Seal of the Council to the CPO and to the Order Map;
 - d) Authorise the Director of Law & Governance to make The Oxfordshire County Council (Highways Infrastructure – A40 Access to Witney) (Side Roads) Order 2023 pursuant to Section 14 of the Highways Act 1980 (as amended) to enable the stopping up of highways and the alteration and improvement of existing highways, and giving authority to the acquisition of necessary land pursuant to the CPO and to affix the Common Seal of the Council to the SRO and to the SRO Plan;

- e) Authorise the Director of Law & Governance to remove from the CPO any plot (or interest therein) no longer required to be acquired compulsorily, to amend the interests scheduled in the CPO (if so advised) and to request that the Secretary of State makes any modifications to the CPO prior to confirmation as may be appropriate;**
- f) Approve the draft Joint Statement of Reasons (Annex A) for the CPO and the SRO, substantially in the form annexed to this report, but to Authorise the Director of Law & Governance to amend and finalise the draft Joint Statement of Reasons as necessary prior to its submission to the Secretary of State;**
- g) Authorise the Director of Law & Governance to advertise the making of the CPO and the SRO and to submit the CPO and SRO to the Secretary of State for Transport for confirmation, together with authorising the Director of Law & Governance to take all other relevant action thereon to promote the confirmation and/or publication of the CPO and the SRO;**
- h) In the event that any Public Inquiry is convened to consider objections to the CPO and/or SRO and/or planning application (by way of a call-in decision), to authorise the Director of Law & Governance, in consultation with the Director of Transport and Infrastructure to prepare and submit such evidence as is necessary in support of the CPO and/or SRO and/or planning application, including enlisting the assistance of outside consultants, legal advisors and Counsel to assist in the preparation and presentation of such evidence.**
- i) As soon as the CPO and the SRO have been confirmed and become operative, to authorise the Director of Law & Governance to comply with all associated requirements in respect of personal, site and press notices of confirmation and to make, seal and give notice of a General Vesting Declaration (or declarations where more than one is required) under the Compulsory Purchase (Vesting Declarations) Act 1981 and/or to serve Notices to Treat and Notice of Entry in respect of those properties to be acquired compulsorily;**
- j) Authorise the Director of Transport and Infrastructure in consultation with the Director of Law & Governance to negotiate terms with interested parties for the purchase by agreement or payment of compensation in accordance with the Compensation Code in respect of any interests or rights in or over any land included in the CPO and, where appropriate, to agree terms for relocation;**
- k) Authorise the Director of Property in consultation with the Director of Law & Governance to complete the acquisition of such interests or rights and execute their legal transfer to the Council;**
- l) In the event that compensation for the acquisition of land cannot be agreed between the relevant parties, to authorise the Director of Law & Governance to make a reference to the Upper Tribunal (Lands Chamber)**

for determination of such compensation together with such other questions as may be necessary to determine, including the engagement of appropriate external legal advisors and surveyors and other experts, as required; In the event that any question of compensation in relation to the acquisition of land is made by way of a reference to the Upper Tribunal (Lands Chamber) (whether by the claimant or the Council), to authorise the Director of Law & Governance to take all necessary steps in relation thereto, including advising on the appropriate uses and compensation payable and issuing the appropriate certificates;

- m) Be notified of the Statutory Blight regime that requires the Council to respond to claims for Statutory Blight pursuant to Part V, Chapter II and Schedule 13 of the Town and Country Planning Act 1990 (as amended);**
- n) In respect of Statutory Blight, delegate authority to the Director for Property Services in consultation with the Director of Law & Governance to agree appropriate terms in accordance with statutory provisions; and**
- o) Underwrite the Scheme costs up to a figure of £6.638m and to forward fund any unsecured and/or conditional developer contributions to the Scheme (as may be secured through planning obligations pursuant to Section 106 of the Town and County Planning Act 1990 (as amended)) up to this underwritten sum, as may be necessary in order to enable the Scheme to have certainty of funding and so as not to create any untimely delay in Scheme delivery.**

Executive Summary

1. The Access to Witney Scheme will provide new west-facing slip roads onto the A40 at Shores Green and new walking and cycling facilities on the B4022 and alongside the A40. The Scheme will reduce traffic flow, reduce traffic delays and improve air quality within Witney town centre, improve connectivity, enhance active travel provision and safety, and support residential and economic development in Witney.
2. Oxfordshire County Council's Local Transport and Connectivity Plan (LTCP) 2022-2050 (adopted on 12th July 2022) provides the latest transport policy context for the Access to Witney junction improvement proposed at A40/B4022 Shores Green. LTCP sets out the target for a net-zero transport network by 2040 and outlines the policies which will help to achieve this, focusing on reducing the need to travel, reducing journeys by car and the promotion of walking, cycling, public and shared transport.
3. With forecasts for over 85,000 new jobs and 100,000 new homes by 2031, LTCP recognises the challenges this growth will have on the transport network, in particular the challenge in enabling people to make journeys, whilst avoiding damage to the economy caused by severe congestion, as well as protecting the environment. LTCP also recognises there are cases where road schemes may

be required and will deliver improvements, including where access is needed to new developments.

4. A set of area and route strategies were published in support of the previous LTP4, including an area strategy for Witney. These are being reviewed and updated. The LTP4 Witney Area Transport Strategy (WATS) set the following transport objectives for the town:
 - Establish a transport network that supports future growth and attracts economic investment by improving access to the strategic transport networks and managing through traffic.
 - Mitigate the local environmental impact of increased travel by addressing congestion, and poor air quality through improving opportunities for people to travel on foot, by cycle, and/or public transport.
 - Support town centre vitality, by providing a local transport network that enables easy access to services by sustainable means
5. The West Oxfordshire Local Plan (2031) identified the Access to Witney strategic highway improvement Scheme as being necessary to support the quantum and distribution of planned housing and employment growth at Witney (the Scheme was denoted as an 'Improved (All Movements) Shores Green Junction'). This improvement Scheme was in addition to the improvements to the Ducklington Lane junction and the new roundabout on the A40 at Downs Road, which have been completed in 2014 and 2018 respectively.
6. The Scheme proposes the installation of west-facing slip roads at the A40/B4022 Shores Green Junction. An off-slip road on the A40 eastbound carriageway (towards Oxford) and an on slip on the A40 westbound carriageway (towards Burford). The new slip roads will connect with the existing B4022 road via signalised junctions.
7. The development proposal to construct two new west facing slip roads requires additional land adjacent to the highway boundary on the A40 and for related highway improvement works to be acquired through CPO powers.
8. The Scheme will provide new walking and cycling facilities on the B4022 and alongside the A40 that will improve provision for active travel between South Leigh, High Cogges and Witney.
9. Existing Public Rights of Way located to north-west of the development area will be stopped up and a integral Footway of the improved A40 provided, running along the length of the proposed off slip to connect with existing onward public rights of way. A new A40 integral unbound Footway will also be provided running along the length of the proposed on-slip, to connect with an existing onward public right of way.
10. Constructing the slip roads as well as altering and improving other highways, including existing Public Rights of Way, require CPO powers and a Side Roads Order.

11. On 20th July 2021, Cabinet approved the preferred scheme and the 'in-principle' use of statutory powers, and preparation of the Compulsory Purchase Order and Side Roads Order.
12. Housing and Growth Deal funding is providing £17m towards the estimated £25m Scheme cost. The grant funding will need to be spent by March 2025, as detailed in the funding agreement with HM Government. £1,387m of funding has been secured from a developer contribution relating to the Burford Road scheme and is held in Oxfordshire County Council's bank. The remaining £6,638m of the Scheme costs will be forward funded by Oxfordshire County Council if and until such time as developer contributions have enabled such monies to be recouped. Should such developer contributions not be recouped, or should there be a shortfall in the monies received by way of developer contributions, the County Council may seek to investigate additional public funding but noting at all times that the County Council is liable for these Scheme costs should alternative funding not be found. Refer to paragraphs 85 to 96 for further details.

Exempt Information

13. Annex B contains exempt information. The information in this case is exempt in that it falls within the following prescribed categories:

2. Information which is likely to reveal the identity of an individual.

and since it is considered that, in all the circumstances of the case, the public interest in maintaining the exemption outweighs the public interest in disclosing the information.

Background

A40 Access to Witney Project

14. Proposals to improve access to Witney commenced in 2014 with improvements to the A40/ Ducklington Lane junction and continued in 2018 with the opening of the new roundabout on the A40 at Downs Road to serve the new Windrush Place development.
15. Improvements are now proposed at A40/B4022 Shores Green Junction. The existing arrangement at the junction only provides east-facing slip roads onto and off the A40. This only allows traffic from the B4022, and communities located in east and north-east Witney, to access the A40 toward Oxford. It is not possible to join the A40 from the B4022 and travel west towards Burford, or to leave the A40 from the west at this junction towards Witney.
16. The Scheme will provide west-facing slip roads onto the A40 at Shores Green. This will reduce the need for traffic from east and north-east Witney to route along Bridge Street and through the town by providing an alternative means of access to the west of Witney via the B4022 and A40. It will also allow those using the A4095 and travelling further west on the A40 or south on the A415 and A4095 to access the A40 at the A40/B4022 Shores Green junction rather than at the A40/ Ducklington Lane junction (via the town centre).
17. The Scheme will provide new walking and cycling facilities on the B4022 and alongside the A40 that will improve provision for active travel between South Leigh, High Cogges and Witney.
18. The West Oxfordshire Local Plan (WOLP) 2031 identifies a number of strategic highway schemes which are “*necessary to support the quantum and distribution of planned housing and employment growth at Witney*” including the Shores Green Slip Roads Scheme. It notes that delivery of Shores Green Slip Roads will be facilitated by the proposed East Witney Strategic Development Area (EWSDA), as outlined in Policy WIT1. It will also support delivery of the North Witney Strategic Development Area (NWSDA), as outlined in Policy WIT2.
19. The plan recognised that the Scheme will help mitigate the potential traffic impact of the developments on A4095 Bridge Street and the town centre, and provide improved accessibility to the retail, industrial and employment centres in south and west Witney and to the A40. It will thereby help reduce traffic and improve air quality in Witney Town Centre.

Need for the Scheme - Economic, Environmental, Health and Social Benefits

20. A detailed rationale behind the need for the Scheme was set out within the report to Cabinet in July 2021 (2021/052), is described in Sections 3 and 5 of the Joint Statement of Reasons (Annex A) and is outlined in paragraphs 20 to 36.

Supporting Growth

21. The relatively high incomes in West Oxfordshire are dwarfed by the cost of housing, with average house prices some 28% higher than the average in England, although lower than the average for Oxfordshire as a whole. As a result, there is significant demand for new homes in Witney.
22. Witney is a key focus for housing growth under the current West Oxfordshire Local Plan (2031), which was adopted in 2018. Witney has doubled in population over the last 30 years and much of its growth has taken place in extensions to the north, west and east of the town.
23. The West Oxfordshire Local Plan proposes delivery of around 15,950 new homes by 2031 and is underpinned by a general presumption in favour of sustainable development. There are limited opportunities for housing within the existing built-up area of Witney and, as such, there is a need to develop on the fringes of the town. Local Plan growth proposals comprise 4,702 new homes in the Witney sub area by 2031.
24. In this context, the Local Plan identified two strategic development areas (SDA) in Witney. One SDA is to the north of Witney (with land currently allocated for 1,400 homes) and the second SDA is to the east of Witney (with land currently allocated for 450 homes).
25. A range of development and transport scenarios were modelled in support of the West Oxfordshire Local Plan (2031) to determine how future development in the town and a range of transport schemes would affect traffic flows. This traffic modelling indicated that proposed Local Plan development would lead to significant congestion issues on Bridge Street without additional highways and transport interventions.
26. The two schemes which showed the greatest potential to reduce congestion were the construction of west-facing slip roads at Shores Green and a new "West End Link", which provides a second crossing of the River Windrush east of Bridge Street.
27. As a result, the West Oxfordshire Local Plan (2031) identifies the Access to Witney highway improvement Scheme as being necessary to support the quantum and distribution of planned housing and employment growth at Witney.

Environmental

28. Traffic congestion is a serious and recognised concern in Witney, and an Air Quality Management Area (AQMA) has been designated at Bridge Street. The main areas of congestion in the existing peak periods are the links around the Bridge Street area, B4022/A4095 junction and on both sides of the River Windrush.
29. The A4095 Bridge Street currently carries an average of around 26,000 vehicles/day. High levels of traffic flow, delays and congestion lead to social and

economic costs to the local area. This is as a result of increased journey times (including for bus passengers), increased driver frustration and poor journey time reliability.

30. The high volumes of traffic on the A4095 Bridge Street and associated congestion have an adverse impact on the quality of the streetscape and environment at Bridge Street itself and in Witney's historic Town Centre, particularly for pedestrians and cyclists. High traffic levels and congestion has led to Bridge Street, Woodgreen and Mill Street being declared an Air Quality Management Area (AQMA) for nitrogen dioxide (NO₂).
31. Despite measured levels of NO₂ being less than the national limit in 2020 and 2021 (reflecting lower traffic levels during the Covid-19 pandemic), as reported in the West Oxfordshire District Council (WODC) 2022 Air Quality Status Report, WODC expects that levels will rise back and exceed the national limit again in the future (as traffic levels return to pre-pandemic levels and as a result of planned new development in the area).
32. The provision of west-facing slip roads at Shores Green will reduce the need for traffic to route along Bridge Street, helping improve air quality in the AQMA. A reduction of traffic on Bridge Street and through the town centre will also make walking and cycling more attractive, enabling a shift from private car to more sustainable transport options, further helping to improve the air quality within the AQMA. It will also support the County Council's ambitions to develop and deliver schemes in Witney town centre that re-allocate road space and promote more walking, cycling and bus use.
33. The Scheme will provide facilities that will improve provision for active travel between South Leigh, High Cogges and Witney supporting planning and transport policy objectives for a modal shift away from car use towards more walking and cycling, reducing overall emissions and supporting the climate agenda.
34. A reduction of traffic and congestion in the town centre will reduce delays and provide greater reliability for bus services helping encourage more bus use.
35. The Scheme design has been informed by a detailed Environmental Assessment as set out within the Environmental Statement submitted in support of the planning application. This includes consideration of air quality, noise and vibration, climate change, flood risk, heritage, biodiversity and landscape among many other key topic areas.
36. The Scheme will result in some significant positive environmental effects. These include the delivery of biodiversity net gain and reducing environmental air pollution in Witney Town Centre.
37. Given the scale of the Scheme it will inevitably have some beneficial and some adverse environmental effects, particularly in the immediate local area around the scheme. The environmental assessments reported likely significant adverse environmental effects during the construction and operational phases of the

proposed development in relation to Geology and Soils, Landscape and Visual and Noise. A comprehensive package of mitigation measures are proposed in the Environmental Statement to minimise adverse effects as far as reasonably possible.

Health

38. The Scheme will enable individual and collective health and wellbeing benefits by providing safer and better walking and cycle facilities and improved connectivity between South Leigh / High Cogges and Witney town centre (via Cogges) and to the proposed segregated cyclist and pedestrian use cycle track along the A40 towards Oxford. This will promote more walking and cycling delivering health and wellbeing benefits.
39. The improvements to air quality provided by the Scheme in Witney Town Centre within the AQMA will provide positive health benefits for residents and users of the town centre.

Social

40. Delivering an enhanced and safer highway network which reduces congestion will result in a reduction in accidents and severance for all road users, particularly for those walking and cycling within the town centre. The Scheme will improve highway safety for all road users by delivering at-grade signal-controlled crossings for pedestrians and cyclists at the new junction and integral A40 Footways, leading to existing rights of way connections, to and from the B4022.

The Benefits of the Scheme

Scheme Objectives

41. The three key objectives for the Scheme are as follows:
Objective 1 - Support the delivery of planned housing growth in Witney as set out the West Oxfordshire Local Plan 2031;
Objective 2 - Reduce congestion and improve air quality in central Witney, including on Bridge Street and in the Air Quality Management Area; and
Objective 3 - Improve access to the A40 from east and north-east Witney.
42. Section 5 in the Joint Statement of Reasons (Annex A) describes how the Scheme addresses these objectives and its benefits. These are also outlined in paragraphs 40 to 46 below.
43. The proposed Scheme will help to promote growth and deliver the new development sites (up to 4,702 new homes as stated in within the West Oxfordshire Local Plan 2031) in the Witney area. The Scheme has been deemed to be critical in facilitating the delivery of up to 1,850 new homes in

Strategic Development Areas (SDAs) in Witney, meeting a need for new housing, including affordable homes for West Oxfordshire, as identified in Oxfordshire's Strategic Housing Market Assessment (April 2014). The delivery of 450 new homes proposed as part of the East Witney SDA is dependent on the intervention of the Scheme. The implementation of the Scheme also supports up to 1,400 new homes that form the North Witney SDA.

44. The Scheme will improve access to the A40 from north and north-east Witney and provide an alternative route across the town reducing the need for both local and strategic traffic to route through Witney's historic town centre.
45. Traffic modelling forecasts that the Scheme will reduce traffic volumes and delays in the town centre. As a result, the Scheme is forecast to improve air quality in the Bridge Street AQMA. This will improve public health and wellbeing. The Scheme will also create more opportunities to promote and deliver active travel measures, traffic reduction and calming features and streetscape enhancements in Witney Town Centre.
46. Local roads such as South Leigh Road (to the south east of Witney), Dry Lane (to the north of Witney) and the route between Minster Lovell and Crawley are also predicted by traffic modelling to see decreases in traffic flow in the AM and PM peak hours.
47. Whilst no increases in traffic flow through South Leigh are predicted in the traffic model under typical traffic conditions, the County Council recognises and understands the concerns that have been raised by South Leigh and High Cogges Parish Council that the new slip roads introduced by Scheme may result in additional traffic 'rat-running' along the C16886 South Leigh Road, Chapel Road and Station Road in the future, particularly when incidents on the A40 eastbound towards Oxford result in long traffic delays to the east of the proposed Scheme. As a result, the County Council is committed to monitoring the impacts of the Scheme on the wider road network (including on the C16886) and will work the Parish Council and local communities to discuss and develop potential mitigation measures, should they be required.
48. The Scheme will provide faster and more reliable journey times for bus passengers in Witney. Bus passengers will also benefit from a more accessible bus stop with enhanced and safer pedestrian access routes. This will promote more public transport use in the area.
49. The Scheme will provide safer walking and cycling facilities through the area, providing improved connections between South Leigh, High Cogges and Witney as well as enabling linkages with development within the EWSDA in accordance with objective CO11 of the WOLP. This will promote more walking and cycling in the area, improving public health and wellbeing, reducing emissions of harmful pollutants and greenhouse gases.
50. The Scheme will improve highway safety for all road users by delivering at-grade pedestrian controlled crossings at the junctions between the new slip-

roads and the B4022 and a new shared use path for cyclist and pedestrians alongside the B4022.

Summary

51. As described in the preceding paragraphs 43 to 47 the Scheme meets the Scheme objectives by:
- delivering critical transport infrastructure required to support delivery of new homes in Witney
 - providing new road network connectivity at Shores Green that will improve access to the A40 from north and north-east Witney
 - providing an alternative route for traffic to cross the town and access the A40 thereby reducing the need for both local and strategic traffic to route through Witney's historic town centre. It is forecast this will reduce traffic volumes and delays in the town centre and help improve air quality in the Bridge Street AQMA.

Explanation of Statutory Powers

52. The Council is the Local Highways Authority (the "LHA") for the area in which the Order Land is situated. By virtue of Sections 239, 240, 246 and 260 of the Highways Act 1980 (as amended) and Part II and III of Schedule 2, and Schedule 3, to the Acquisition of Land Act 1981, the Council has the power to acquire compulsorily any land in its area for highway purposes.
53. The Guidance published by the Department for Levelling Up, Housing and Communities in (July 2019) ("the Guidance") provides guidance on the use of compulsory purchase powers. In accordance with the Guidance, the purpose for which an authority seeks to acquire land will determine the statutory power under which compulsory purchase is sought. The Guidance advises that acquiring authorities should look to use *'the most specific power available for the purpose in mind, and only use a general power where unavoidable'*. The Council relies on the provisions of Part XII of the Highways Act 1980, which provide the specific powers in respect of the compulsory acquisition of land for highway purposes.
54. The Council has been seeking to negotiate the acquisition of all the legal interests in the land required for the construction of the Scheme by agreement. The Council does, however, need to utilise its powers under the Highways Act 1980 (as amended) and the Acquisition of Land Act 1981 because it considers that it may not be possible to agree terms for the acquisition of all the remaining interests in the land required to facilitate construction of the Scheme. In accordance with the Guidance, the Council is therefore using its powers to compulsorily acquire the remaining interests as a matter of last resort, with efforts to acquire interests by private treaty continuing in parallel with this process right up to confirmation and implementation of the CPO.

55. Having regard to the nature of the proposals and the advice set out in the Guidance, Cabinet is advised that the powers available to it under Sections 239, 240, 246 and 260 of the Highways Act 1980 (as amended and Part II and III of Schedule 2, and Schedule 3, to the Acquisition of Land Act 1981) are the most appropriate powers to use in order to achieve its objectives for this part of Oxfordshire.
56. Sections 239 and 240 are concerned with the general powers of highway authorities to acquire land for the construction and improvement of highways, for the improvement or development of frontages to a highway or land adjoining thereto, and for use of land in connection with the construction or improvement of a highway or the carrying out of other works authorised by a Side Roads Order under Section 14 of the 1980 Act. Section 246 provides a power to acquire land for mitigating the adverse effects of the existence or use of a highway constructed or improved on its surroundings. Section 260 relates to the clearance of title to land already acquired by the highway authority for highway purposes.
57. The powers in the 1980 Act enable the Acquiring Authority to acquire land compulsorily for the following purposes of the Scheme:
- the improvement of the A40 Principal Road, from a point on the south west side of the A40 overbridge crossing of the B4022, at South Leigh, south westwards for a distance of approximately 775 metres, and incorporating the construction of a new eastbound exit slip road, from a point on the existing A40 approximately 520 metres south west of the A40 overbridge crossing of the B4022, north eastwards to its junction with the B4022, and a new westbound entry slip road, from its junction with the B4022, south westwards to its junction with the A40, at a point approximately 280 metres south west of the A40 overbridge crossing of the B4022;
 - the construction of a highway and the improvement of highways in pursuance of The Oxfordshire County Council (Highways Infrastructure – A40 Access to Witney) (Side Roads) Order 2023;
 - the carrying out of works on watercourses, in connection with the construction and improvement of highways as aforesaid;
 - the improvement or development of frontages to the above-mentioned new and existing highways or of the land adjoining or adjacent thereto;
 - the use by the acquiring authority in connection with the construction and improvement of highways as aforesaid; and
 - mitigating the adverse effect which the existence or use of the highways to be constructed improved will have on the surroundings thereof.
58. The CPO also incorporates the Mining Code contained in Parts II and III of Schedule 2 to the Acquisition of Land Act 1981 and applied by Section 3 of that

Act. By virtue of these provisions, the CPO does not seek to compulsorily acquire mineral interests in the Order Land. Incorporation of the Mining Code within an order, thereby engaging Parts II and III of Schedule 2 to the Acquisition of Land Act 1981, provides for the exclusion of mineral right acquisition from the CPO, avoiding sterilisation of the minerals whilst providing a degree of protection for the Acquiring Authority and allowing the Scheme to be taken forward. By incorporating the Mining Code, the Acquiring Authority can take steps to prevent the working of minerals within a specified distance of the surface, provided compensation is paid.

59. The SRO will authorise the stopping-up, alteration and improvement of existing highways and the CPO will include land that is required to enable the works authorised by the SRO to be carried out and associated Scheme works. The SRO gives authority to certain of the CPO acquisition purposes as being in pursuance of the SRO and the CPO cannot, therefore, be made without the SRO having first been made (i.e., sealed, executed and dated by the Council), though this will happen immediately consecutively.
60. A recommendation to this report seeks delegation to officers to amend the Orders and supporting documentation, prior to their making. These amendments will generally be limited to technical clarifications throughout the Joint Statement of Reasons, together with the detail of the Orders themselves and other supporting documentation appended to it, noting that no additional land or land interests will be included in excess of the total of the those defined in the CPO before Members for approval. This ability to modify is required to ensure that the Orders are accurate in advance of them being made following Cabinet approval.

Location and Description of the Scheme and its land and the Side Roads Order

61. Details of the land interests to be acquired are set out in the Schedule to the CPO and are shown shaded in pink on the Order Map.
62. The Scheme Land is located within the boundaries of the West Oxfordshire District to the south of Witney town centre.
63. The Side Roads Order can be described as follows: a statutory order which authorises a highway authority to make alterations to highways affected by a Classified Road Scheme (the A40 improvement Scheme and its new slip roads). The Access to Witney Scheme Side Roads Order will authorise the stopping up of lengths of highways, public rights of way, and the improvement of highways to facilitate the Scheme. The Side Roads Order will complement the CPO and is to provide authority to the works that the County Council considers are needed to deliver the Scheme.
64. The Joint Statement of Reasons accompanying the CPO and the Side Roads Order contains a more detailed analysis of the Side Roads Order provisions (Section 10 of the Statement of Reasons).

Planning Policy Considerations

65. In making the Orders, the Council must have regard to national policy, the development plan and other relevant local policy and guidance, together with any other material considerations as required by Sections 38(6) of the Planning and Compulsory Purchase Act 2004 and 70(2) of the 1990 Act.
66. Key material planning policy considerations for the Access to Witney Scheme include the National Planning Policy Framework (NPPF), Planning Practice Guidance (PPG), the West Oxfordshire Local Plan 2031 (adopted) and South Leigh Neighbourhood Plan.
67. The proposals are in accordance with development plan policies regarding sustainable development, supporting delivery of housing growth in Witney, transport, rights of way, air quality, landscape, biodiversity, flooding and the historic environment. There would be residual permanent significant noise impacts which render the development to not be entirely in accordance with development plan policy with regard to noise. However, it is considered that this is substantially outweighed by the wider overall benefits of the development.
68. Overall, the social, economic and health benefits of the Scheme in terms of unlocking housing delivery, improving accessibility and movement in the area, as well as and reducing environmental air pollution substantially outweigh the limited adverse effects on noise. It is therefore considered that, taking the Development Plan as a whole, there is strong support in favour of the grant of planning permission. The decision on planning permission is awaited but it is expected that planning permission will be in place by Q3 2023 and, as such, it is not consider that there will be a planning impediment to the Scheme.
69. A detailed analysis and consideration of the planning and transport policy context can be found in the Joint Statement of Reasons, attached at Annex A.
70. The Secretary of State for Transport adopts the practice of not confirming any Compulsory Purchase Order and related Side Roads Order until such time as planning permission for the Scheme has been granted.

Planning - Current Position

71. A Scoping report, which sets out in detail the proposed approach to the requisite EIA was submitted to the LPA on 1 June 2021 (R3.0079/21) with a formal response issued on 4 June 2021.
72. A planning application for the Scheme was validated by Oxfordshire County Council as the determining authority on 1 April 2022 under application reference R3.0039/22. A request for Regulation 25 was made following queries around requirements for Biodiversity, Landscape and visual impacts (including

arboriculture) and Climate. All queries to date have been clarified and responded to, with public consultation now closed as of 3 January 2023.

73. Positive discussion has been held with the County Planning Authority throughout the application determination period. The planning application was due to be determined at Planning and Regulation Committee on 17 April 2023, however, the item was deferred owing to concerns received from South Leigh and High Cogges Parish Council in relation to the scheme design and environmental impacts. The Applicant has continued its dialogue with South Leigh and High Cogges Parish Council and it is now expected that the application will be determined at Planning and Regulation Committee in June 2023.

Legal Implications - The Compelling Case in the Public Interest

Appropriateness of Powers

74. The Scheme is a highways scheme and, as such, the Council has statutory powers available for the compulsory acquisition of land to facilitate the Scheme in Part XII of the Highways Act, which are considered to be the most appropriate powers under which to exercise the Council's powers of compulsory acquisition.

Need for Compulsory Acquisition

75. The Council has made and will continue to make every effort to acquire all necessary interests in land required to deliver the Scheme (and will continue to do so in parallel to the compulsory purchase process) but it recognises that it may not be possible to agree terms for the acquisition of all the remaining interests. The acquisition of all relevant interests is necessary to enable the delivery of the Scheme.

Public Interest Test

76. The Guidance advises that a compulsory purchase order should only be made where there is a compelling case in the public interest. Members should satisfy themselves in approving this report that this requirement is satisfied. Officers consider that the benefits summarised in this report and in the Joint Statement of Reasons provide a compelling case in the public interest, which justifies the compulsory acquisition of the Order Land.

Statutory Blight

77. In progressing the Scheme, the Council could be required to deal with issues of Statutory Blight pursuant to Part VI, Chapter II and Schedule 13 of the Town and Country Planning Act 1990 (as amended). Statutory Blight affects those properties that are 'on-line' of the Scheme and their purchase (or part thereof) is required for the Scheme. A process for dealing with Statutory Blight notices is essential to ensure effective management of the Scheme and this has been established. Officers will manage the process and, with legal advice provided

by already appointed specialist solicitors, will liaise with land and property owners with the aim of reaching an agreement for acquisition where the statutory criteria have been met.

78. Statutory Blight is a consequence of legislative ‘triggers’, one being the approval by the Council of the preferred route. As Cabinet has already approved this in July 2021, the Council became liable for members of the public submitting a Statutory Blight claim in relation to any qualifying land interest and subject to meeting the statutory requirements for eligibility.
79. The Council, in accordance with its legal obligations, has examined the potential for receiving statutory blight claims from affected property owners and occupiers whose land is to be acquired by virtue of the Scheme. The Council has considered the impacts of the Scheme upon the remaining land holdings of such land interests and has concluded that none are impacted to the extent that their remaining holdings are rendered untenable/unviable, which might give rise to any successful Statutory Blight notice. This does not, however, negate the ability of a party to submit a Statutory Blight Notice, and the resultant obligation upon the Council to consider and respond to the same in line with the statutory criteria and, as such, Cabinet Members are informed about the process and a resolution is sought to allow for this process to be followed. A successful Statutory Blight notice results in the property being acquired as if it was pursuant to a compulsory purchase order and so there are heads of claim that parties will be entitled to outside of the market value of the property itself.
80. Wider impacts of the Scheme on business and residential property that is off-line of the Scheme will be dealt with under Part 1 of the Land and Compensation Act 1973 (‘Part 1 Claims’). A Part 1 claim can be applied for one year and one day following the Scheme being opened to the public and covers claims relating to noise, vibration, smell, fumes, smoke, artificial lighting and discharge of water or other substances as a result of the use of the Scheme.
81. These legal implications have been reviewed by TLT LLP as the Council’s appointed legal advisors.

Comments checked by: Jayne Pringle, Interim Principal Solicitor (Contracts & Conveyancing)

Jayne.Pringle@Oxfordshire.gov.uk

Consideration of Human Rights

82. The following articles of the Convention are relevant to the determination as to whether the Order should be made:
 - i) Article 1 of the First Protocol protects the right of everyone to peaceful enjoyment of possessions. No one can be deprived of their possessions except in the public interest and subject to the relevant national and international laws. Any interference with possessions must be proportionate and, in determining whether a particular measure is

proportionate, a fair balance must be struck between the public benefit sought and the interference with the rights in question;

- ii) Article 6 entitles those affected by the powers sought in the Order to a fair and public hearing by an independent and impartial tribunal;
 - iii) Article 8 protects the right of the individual to respect for his private and family life, his home and his correspondence. A public authority cannot interfere with these interests unless such interference is in accordance with the law and is necessary in the interests of, inter alia, national security, public safety or the economic wellbeing of the country.
83. The Guidance explains that a Compulsory Purchase Order should only be made where there is “a compelling case in the public interest”. The Guidance makes it clear that an acquiring authority should be sure that the purposes for which it is making a Compulsory Purchase Order sufficiently justify interfering with the human rights of those with an interest in the land affected. In making this assessment, an acquiring authority should have regard, in particular, to the provisions of Article 1 of the First Protocol and Article 6 of the Convention and, in the case of a dwelling, Article 8 of the Convention. These are summarised and considered in detail in the Joint Statement of Reasons.
84. In considering the justification for the CPO, careful consideration has been given by officers to the balance to be struck between the effect of acquisition on individual rights and the wider public interest in the delivery of the highway improvement Scheme. The compulsory acquisition of land and rights is required in order to deliver the Scheme. Interference with Convention rights is considered to be proportionate and justified in order to secure the construction of the Scheme and its associated benefits.

Financial Implications

Scheme Costs and Funding

85. In order to confirm a compulsory purchase order, the Secretary of State must be satisfied that the Acquiring Authority for the Scheme has available to it all relevant resources to enable delivery, that is, that the necessary funding can be provided and the Scheme is financially viable.
86. The total estimated final cost (EFC) of the Scheme is **£25.025m** inclusive of anticipated land acquisition costs. The risk associated with scheme delivery is captured within the EFC total. The project risks are identified and reviewed regularly along with a quantitative risk analysis being undertaken which provides total estimated costs of the risk. The risk of inflation is captured as a risk item within the overall risk allocation. Inflation is calculated using the Building Cost Information Services (BCIS) inflation index. The BCIS index is updated on a monthly basis and the figures in the budget reviewed on a monthly basis to understand any additional risk or opportunities. The current total risk allocation for the project is **£4.678m**.

87. The Scheme will be funded via a mixture of Housing and Growth Deal Funding and Section 106 planning obligation funding as shown in Table 1.

Table 1 – Funding Summary

Source	
Housing and Growth Deal	£17.00m
Section 106 Developer Contributions	£8.025m
Total	£25.025m

88. The Scheme has been allocated funding of **£17.00 million** as part of the Housing & Growth Deal (HGD) capital programme to support the delivery of new homes proposed in the Witney area in the WOLP, including at the East Witney SDA and North Witney SDA. The original HGD funding was allocated spanning a five-year period from 2018/19 up to 31 March 2023. The grant provider, Homes England, agreed a further two-year extension to the HGD programme for monies to be used until March 2025. As a result, the £17m HGD funding for AtW will be available until the 31 March 2025.
89. The remaining **£8.025m** funding will be provided by Section 106 developer contributions. Section 106 contributions are either secured or unsecured. Unsecured S106 contributions are currently still in negotiation. The unsecured s106 contributions will be underwritten and forward funded by the Council. There is no guarantee of recovery of non-secure Section 106 contributions.
90. A financial contribution of **£1.387m** has already been secured towards the Scheme by way of a S106 planning obligation from a development of 250 homes on land at Burford Road, Witney (14/1215/P/OP).
91. The East Witney SDA has been requested to contribute funding of up to **£6.638m** toward the Scheme as part of the negotiations between OCC, WODC and the developer. The negotiations are ongoing and the S106 agreement will contain triggers for the funding toward the Access to Witney scheme over a period of time and will need to be signed by all parties to the agreement to offer certainty around this element of funding for the Access to Witney Scheme. The North Witney SDA will also be requested to contribute funding toward the Scheme, although negotiations have not yet commenced. There is no guarantee that the full s106 developer contribution required will be secured.
92. As the availability of these S106 monies is not yet secured and will be conditional on the commencement of the development to which the S106 agreement(s) relate, the Acquiring Authority will underwrite and forward fund the **£6.638m**.
93. Forward Funding is a mechanism whereby the Acquiring Authority would be liable for money spent on the Scheme for a period of time, with recovery measures in place for this money to be recouped from S106 contributions at a later date, or secured from alternative public funding grants.

94. Should such developer contributions not be recouped, or should there be a shortfall in the monies received by way of developer contributions, the County Council may seek to investigate additional public funding but noting at all times that the County Council is liable for these Scheme costs should alternative funding not be found. The Acquiring Authority is therefore requested to underwrite the full cost of any outstanding funding and to forward fund these monies, should developer Section 106 monies or alternative public funding not be secured.
96. The current spend profile indicates that the total of the Housing and Growth Deal funding would be drawn down in full first, with the additional S106 financial contributions to the Scheme backloaded to the latter stages of delivery. Therefore, any Council spend on any additional contributions is anticipated to commence in 2025.

Comments checked by:

Rob Finlayson, Finance Business Partner (Environment & Place),
rob.finlayson@oxfordshire.gov.uk

Equality & Inclusion Implications

97. 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. Recognising and complying with these higher standards is required to discharge the PSED. In particular, steps must be taken to meet the needs of persons who share a relevant protected characteristic that are different from the needs of persons who do not share that characteristic.
98. The equalities implications of the Access to Witney Scheme have been assessed robustly through the option assessment and design development stages of the Scheme and in reaching the preferred option. These equalities implications have been considered in line with the Equality Act 2010 through the completion of an Equality and Climate Impact Assessment (EqCIA), contained as an Annex to the Joint Statement of Reasons.
99. Conclusions from the EqCIA indicate that due regard has been had in considering design principles from an equality perspective, and that measures have been included within the proposals to mitigate against potential differential impacts, which may be experienced by some protected characteristic groups.
100. The EqCIA recommends the Acquiring Authority, through Scheme finalisation, ensures that designs are fully inclusive and attractive for everyone, specifically listing information provision, materials use, public realm design, lighting and seating as key areas. The Acquiring Authority is fully aligned and in agreement with these recommendations. The EqCIA assessment approach will continue throughout the Scheme's life cycle and post-delivery, in order to ensure every opportunity to positively promote equality is taken.

Sustainability Implications

101. The Scheme will help to reduce traffic flows and alleviate congestion in the centre of Witney, especially in the AQMA (Air Quality Management Area) covering Bridge Street and its surroundings.
102. By providing safer walking and cycling connections and conditions the Scheme will promote more walking and cycling in the area, improving public health and wellbeing, reducing emissions of harmful pollutants and greenhouse gases.
103. The Scheme will reduce traffic and delays in Witney providing faster and more reliable journey times for bus passengers and encouraging greater use of this sustainable mode.
104. The benefits of the Scheme would be further enhanced by the public transport and active travel benefits that the wider A40 corridor investment programme is intended to deliver, should they also come forward.
105. The delivery of the Scheme and other planned transport investment on the A40 corridor, will form a core part of the promotion of more sustainable forms of travel for the new developments planned for the West Oxfordshire area. This will be teamed with promotional activities to achieve the cultural shift required.
106. The Scheme design has also been developed to offset any bio-diversity net loss and provision of improved environment and habitat for wildlife, providing a 10% net gain in biodiversity as a direct result of its implementation. It will include sustainable drainage systems and provide improved access to wildlife sites.

Risk Management

107. Key risks to Scheme delivery and their relevant mitigation and management were discussed in detail within the report to July 2021 Cabinet as listed within the background papers. A detailed risk register is being maintained.
108. These risks, particularly those relating to property acquisition, are still relevant and are being mitigated by the progress that has been made in relation to land purchase and the potential to CPO if necessary.
109. The risks will be managed and monitored on an on-going basis as part of the overall governance of the project.

Consultations

110. A series of public consultations have been undertaken over the course of the Scheme development, notably (but not restricted to) engagement events in May/June 2021. Formal responses will be considered through the statutory consultation associated with the planning application process.
111. The Consultation Response Report was included within the report to Cabinet in July 2021, now listed as a background paper.
112. A detailed consideration of the consultation undertaken to inform the Scheme can be found in the Joint Statement of Reasons, attached at Annex A.

Bill Cotton
Corporate Director for Environment and Place

Annexes:

Annex A – Draft Joint Statement of Reasons
Annex B – Draft CPO, draft order map, draft SRO and draft SRO plan

Background papers: Cabinet report – July 2021 – FP 2021/052: A40 Access to
Witney – Preferred Option and In Principle Use of
Statutory Powers

Contact Officer: Olu Solola, Programme Lead

May 2023