

Cabinet – 11 December 2013

York's Bridge Replacement Scheme, Pelsall

Portfolio: Councillor A. Andrew – Deputy Leader, Regeneration & Transport

Related portfolios: None

Service: Neighbourhood Services

Wards: Pelsall

Key decision: No

Forward plan: No

1. Summary

- 1.1 A report was submitted to Cabinet on the 24 July 2013 recommending approval of the location of the proposed new bridge to be constructed alongside the existing York's Bridge. An issue was raised relating to whether the Council was the legal owner of a section of Moat Farm Pool. This land forms part of the exchange land proposal to replace those areas of Pelsall Common which are to be de-registered as common land as a result of the construction of the new bridge. Cabinet passed five resolutions for the furtherance of the scheme but these were preceded with the caveat "That subject to the Council requesting and securing the ownership of all of the land at Moat Farm Pool:" This report will update Cabinet on developments relating to the registration of the Council's legal title to the land in question at Moat Farm Pool.
- 1.2 This report also seeks approval for the Council to formally sign up to the Framework Agreement for Minor Civil Engineering Works, which has been developed by Centro in conjunction with the Black Country authorities. Joining this framework will facilitate the appointment of a contractor for the construction of the York's bridge project without the need for lengthy and costly European procurement procedures.

2. Recommendations

- 2.1 That Cabinet note the Council's legal ownership of land at Moat Farm pool and confirm that the condition attached to the approvals recorded in the minutes to the Cabinet meeting of 24 July 2013 relating to legal ownership has now been satisfied.

- 2.2 That Cabinet authorise the Head of Engineering and Transportation, in liaison with the Heads of Procurement and Legal Services, to formally join the Framework Agreement for Minor Civil Engineering Works.

3. Report detail

- 3.1 On 24 July 2013, a report was submitted to Cabinet summarising the outcome of the consultation exercise which was carried out between 5 March and 19 April 2013 and seeking approval of the positioning of the new bridge.

- 3.2 The scheme will involve the construction of a new bridge alongside the existing York's Bridge which will result in the loss of some areas of land forming part of Pelsall North Common ("the common land"). An application will need to be made to the Planning Inspectorate to de-register this land as common land. The statutory provisions governing the de-registration process requires that if the land which is to be deregistered is more than 200 square metre in area then the application must include a proposal for exchange land to replace the parts of the common land which is to be de-registered. The exchange land cannot be land which is already registered as common land or a town/village green. The application for de-registration must be made by the owner of the common (the owner of any exchange land if different from the common land must also be joined in the application). Consents of any leaseholders or charge holders of the land are also required.

- 3.3 At the Cabinet meeting two alternative proposals were put forward as part of the scheme:

Option 1

Related to the alignment of the new carriageway being closer to Mallard Close than at present.

Option 2

York's bridge being closed and demolished with a new bridge being built as close as possible to the current location.

Cabinet agreed to hear representations from local residents and a point was raised by their spokesperson, relating to ownership of land at Moat Farm Pool. Representations were made that at the time of the meeting, the Council was not the freehold owner of all of the land at Moat Farm pool, which had been identified as exchange land.

Cabinet, having listened to the representations made by the spokesman for local residents, considered the advantages and disadvantages of both options and resolved to approve option 1 as the preferred scheme subject to the Council securing ownership of all the land at Moat Farm Pool.

- 3.4 Ownership boundaries at the pool are shown on the plan in **Appendix A**. The area marked 'A' was transferred to council ownership by the developers on completion of the Moat Farm estate. At the time of the July Cabinet meeting the council was registered with the Land Registry as having 'absolute' title to this

area. The area marked 'B' was unregistered and despite having maintained this area for many years officers were unable to ascertain any documentary proof of the Council's legal title. In order to address this issue an application was made to the Land Registry for the Council to be granted title on the grounds of adverse possession. At the time of the meeting on 24 July 2013 the Land Registry had only commenced consideration of the Council's application in relation to the area marked "B" which was the subject matter of the resident's comments.

- 3.5 The Land Registry has now considered the application and, as of 27 September 2013, the Council is now registered as having possessory title. The granting of possessory title means that the Land Registry has recognised the validity of the Council's claim but cannot guarantee that there are no adverse rights over the land that pre-exist the date of registration.
- 3.6 Possessory title is not as good as absolute title but it gives the Council a class of ownership of the area marked 'B'. Having possessory title means that the Council can now satisfy the statutory requirements for the de-registration of common land in that it is the owner of the both areas of the exchange land marked 'A' and 'B'. The minutes of the meeting of 24 July 2013 record Cabinet's approval to various recommendations subject to securing ownership of all of the land at Moat Farm pool. In order to be entirely accurate not "*all*" of Moat Farm pool is required as exchange land. Only that indicated as areas A and B in **Appendix A** is needed and that is what is in the ownership of the Council. Officers subsequently consider that this condition has now been met but for the avoidance of doubt request that Cabinet formally note this and confirm that the minuted resolutions numbered 1 to 5 inclusive are now fully effective.
- 3.7 At its meeting on 23 January 2013, Cabinet gave approval for the Executive Director for Neighbourhood Services, in consultation with the Portfolio Holder for, what was at the time, Transport and Environment, to undertake the procurement of a contractor to build the scheme. Officers have been considering the most appropriate method of procurement having due regard to the Financial and Contract Rules.
- 3.8 Section 5 of the Contract Rules direct that where existing council contracts, consortium arrangements or framework agreements are in place these shall be used unless a Chief Officer has agreed otherwise. Section 5 also identifies a number of circumstances that officers must establish before any procurement is commenced. Amongst these is whether other Central Purchasing Bodies' Framework Agreements are available.
- 3.9 In recent years Centro has been putting together a framework contract for minor civil engineering work. The contract, which permits local authorities to join the framework, became live in January 2013 expiring in December 2016. Having examined the contract officers are confident that it would be suitable for the construction of the York's bridge works in terms of both the nature of the work and in duration.
- 3.10 The contractors included in the framework were all selected following a competitive process which followed European procurement rules. Several neighbouring local authorities have already joined the framework including; Sandwell, Dudley, Birmingham and Wolverhampton. Although initially aimed at

the West Midlands authorities Centro has advised that East Midlands authorities have also shown a strong interest. There is no fee for joining the framework and the council would be under no obligation to provide any work.

- 3.11 It is envisaged that the Centro framework contract would sit alongside existing council arrangements for the delivery of minor civil engineering schemes. It would therefore not be used exclusively for York's Bridge but would provide a wider choice of contractors from which officers can seek to deliver best value in terms of work quality, cost and contractor availability. With regard to the York's bridge project the availability of the framework contract would avoid the need for lengthy and costly contractor procurement procedures.
- 3.12 Officers therefore seek approval of the joining of the Centro led Framework Contract for Minor Civil Engineering Works for potential use on all suitable construction projects.

4. Council priorities

4.1 Communities and Neighbourhoods

- 4.1.1 The failure to address current problems associated with the existing bridge will ultimately have a negative impact on the local community's ability to travel. Vehicular use of York's bridge will ultimately need to be curtailed either through the need for additional weight restrictions or complete closure of the bridge.

4.2 Health and well-being

- 4.2.1 The safety of all road users will be improved and maintained by the introduction of the replacement bridge that will address current road safety concerns.
- 4.2.2 The content of this report will support the delivery of the Marmot objective to create and develop healthy and sustainable places and communities. Deregistration of small sections of Pelsall North Common will allow for the bridge replacement scheme to be progressed, ensuring vital, safe and efficient accessibility is maintained for the local community.

4.3 Economy

- 4.3.1 By maintaining the safe and efficient operation of a district distributor road the health of the local and wider economy will be maintained. The efficient delivery of goods and services will be supported, helping to reduce operational costs for businesses and ultimately prices to customers.

5. Risk management

- 5.1 Before de-registration of common land can take place the consent of the Planning Inspectorate must be obtained. In order to do this the Council is required to follow the Statutory Provisions set out in Section 16 of the Commons Act 2006 which govern the de-registration of common land and the registration of land offered in exchange. In addition further consent may be required under

Section 38 of the Commons Act 2006 to facilitate work on Pelsall North Common which is incidental to the project.

- 5.2 The Statutory procedures set out in Section 16 and 38 of the Commons Act 2006 enable the Planning Inspectorate to cause a Public Inquiry to be heard before determining the application.
- 5.3 Failure to secure permission to de-register the necessary common land would prevent delivery of the current scheme.
- 5.4 Before the scheme can commence the Council has to secure planning consent, consent to deregister part of the common and consent to bridge the canal (Bridge Order). Each of these involve a consultation process and each has the possibility of leading to a formal review, either by way of Judicial review or Public Inquiry, and therefore have the potential to cause delay.

6. Financial implications

- 6.1 Funding for this scheme has been allocated from the Department for Transport through the Local Transport Plan allocation for bridge maintenance. No additional Council funding is required.
- 6.2 There are no financial implications in joining the Framework Contract for Minor Civil Engineering Works.

7. Legal implications

- 7.1 Pelsall North Common is registered as common land under the Commons Act 1967. Section 16 of the Commons Act 2006 enables the owner of the land registered as common land to apply to the Planning Inspectorate for the land or part of the land to be released or deregistered as common land. 'Owner' is interpreted in s.61 as references to the ownership or the owner of any land are references to the ownership of a legal estate in fee simple in the land or to the person holding that estate." Accordingly for the purposes of section 16 the term owner relates to the freehold interest in the land. If the land which is to be de-registered as common land ("the release land") is more than 200 square metres in area the application must include a proposal for replacement land in place of the land to be deregistered ("the exchange land"). The exchange land cannot be land which is already registered as common or a town or village green. As the area of Pelsall Common which is to be de-registered is in excess of 200 square metres, it was necessary to identify a suitable area of replacement land. Cabinet agreed at its meeting on 23 January 2013 that land at Moat Farm pool should be proposed for this purpose. Further explanation of the de-registration process was set out in the Cabinet report of 24 July 2013.
- 7.2 Subsequent to the Cabinet report of 23 January 2013 it was discovered that an area of the land at Moat Farm pool was unregistered and the Council was unable to demonstrate documentary evidence of its legal title to the land. Consequently an application was made to the Land Registry for adverse possession on the grounds that the Council had been maintaining the area for many years. The

Land Registry has now considered the application and, as of 27 September 2013, the Council is now registered with 'possessory' title. The legal advice received is that the Council can now fulfil the requirements of the Commons Act 2006 that it is the owner of the exchange land .

- 7.3 Joining of the Framework Contract for Minor Civil Engineering Works will enable officers to comply with the Contract Rules with regard to procurement of a contractor for the construction of the scheme. If Cabinet elect not to allow joining of the Framework officers will need to follow lengthy European procurement procedures.

8. Property implications

- 8.1 Delivery of this project requires the acquisition of two small areas of land from the Canal and Rivers Trust. Negotiations are complete and the acquisition is in its final stages.

9. Health and wellbeing implications

- 9.1 This proposal will help support the Council's key priority on Health and Wellbeing by encouraging people to lead a more active lifestyle by providing better access to the common.

10. Staffing implications

- 10.1 None directly associated with this report.

11. Equality implications

- 11.1 None directly associated with the report.

12. Consultation

- 12.1 Widespread consultation was carried out in the Pelsall area during March and April 2013 to satisfy the statutory requirements of the Commons Act 2006 and the preferred pre-planning application process. Statutory consultation has also been carried out in relation to the Bridge Order as required by Section 106 of the Highways Act 1980.

Background papers

Report to Cabinet on 23 January 2013 – York's Bridge, Pelsall

Report to Cabinet on 24 July 2013 – York's Bridge Replacement Scheme, Pelsall

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Jamie Morris
Executive Director

A handwritten signature in black ink, appearing to read 'Jamie Morris', with a stylized, cursive script.

29 November 2013

Councillor Adrian Andrew
Portfolio Holder

A handwritten signature in blue ink, appearing to read 'Adrian Andrew', with a stylized, cursive script.

29 November 2013



No.	Revisions	By	Date	Purpose of Issue	Rev	Admin	Date
YORK'S BRIDGE, NORTON ROAD, PELSALL							
PLAN SHOWING OWNERSHIP STATUS OF EXCHANGE LAND							
AT MOAT FARM POOL							
Drawn:	GP						
Checked:	PS						
Date:	OCT 2013						
Scale:	N.T.S.						
Original drawing size A3							
If printed on other size, then scale shown does not apply.							
ENGINEERING DESIGN & CONSTRUCTION SERVICES							
MAJOR PROJECTS & MINOR IMPROVEMENTS							
Drawing No.	Appendix A						
Walsall Council							