

## **Cabinet – 23 January 2013**

### **Darlaston Strategic Development Area – Bentley Road South Rail Bridge Works**

**Portfolio:** Councillor Ansell, Transport & Environment  
Councillor Adrian Andrew, Deputy Leader, Regeneration

**Related portfolios:** None

**Service:** Strategic Regeneration

**Wards:** Bentley and Darlaston North, Pleck

**Key decision:** Yes

**Forward plan:** Yes

#### **1. Summary**

- 1.1 Since 2003, the Council has been promoting a set of highway improvements in the Darlaston Strategic Development Area (DSDA). The aim is to facilitate inward investment to the area and create new employment opportunities that will benefit local people. The potential for transport improvements to support the bringing forward of high-quality employment in the area is recognised in the Black Country Core Strategy and supported by the Black Country Local Enterprise Partnership (LEP) as part of its Enterprise Zone development programme.
- 1.2 A major scheme business case for the proposed highways improvements was submitted to the Department for Transport (DfT) in March 2010. During that year the appraisal of this business case was put on hold because of the May general election; the June emergency budget; and the October Comprehensive Spending Review.
- 1.3 In February 2011, the DfT asked for a Best and Final Funding Offer to be submitted by September 2011 which summarised the scheme proposals; updated the business case (or value-for-money considerations); and set-out a final funding offer incorporating cost savings and third party contributions. The submission acknowledges that project risk is the sole responsibility of the Council.
- 1.4 The DfT granted Programme Entry status on 14<sup>th</sup> December, 2011. The Programme Entry approval fixes the maximum value that can be claimed from the DfT.
- 1.5 The Compulsory Purchase Order was published on Thursday 13<sup>th</sup> December 2012. Due to the length of time it has taken to resolve all Exchange Land in relation to the CPO, the programme to receive Full Approval has slipped back by 3 months.

- 1.6 In order to still meet the timescales submitted to the DfT in September 2011 and to ensure that the Network Rail track possessions remain for October 2013, some advance works need to be commissioned in advance of receiving Full Approval.
- 1.7 Cabinet approved a report tabled in April 2012 setting out the delivery strategy, budgets, project risks and team setup. Cabinet agreed all financial implications for the project and the need to deliver the scheme to the programme submitted to the DfT in September 2011.
- 1.8 This report seeks Cabinet approval to take forward the Bentley Road South Rail Bridge Works in advance of receiving Full Approval from the DfT and receiving confirmation that the CPO has been confirmed by the Secretary of State.

## **2. Recommendations**

- 2.1 That Cabinet approve the way forward set out in Option A in section 3 of the report
- 2.2 That Cabinet approve the commissioning of Bentley Road South Railway Bridge Works in advance of receiving Full Approval from the Department for Transport.
- 2.3 That Cabinet delegate authority to the Executive Director for Regeneration to authorise the entering into of an agreement for works with Network Rail Infrastructure Limited ("Network Rail") in relation to the replacement of Bentley Road South Railway Bridge ("the Network Rail Works Agreement") which obliges the council to pay the full costs of those works and any related ancillary deeds or documents..
- 2.4 That Cabinet accept the risk that the costs under the Network Rail Works Agreement will be paid by the council in full but are currently unquantified and no financial limit to the costs has been set in that agreement.
- 2.5 That Cabinet authorise a Package Order to be signed by the Executive Director for Regeneration with Birse Civils Ltd for the ground investigations and any other advanced works required complete the highway design.
- 2.6 To note the Darlaston Strategic Development Area scheme was listed in the Chancellors Autumn Statement 2012, stating construction would commence in 2013.

## **3. Report detail**

- 3.1 Since 2003, the Council has been promoting a major transport scheme in the Darlaston Strategic Development Area (DSDA) to improve key parts of the local highway network and help stimulate major investment in new employment opportunities.
- 3.2 Walsall's Unitary Development Plan has recognised the area as a major concentration of 'Core Employment' for industry and warehousing. The Black Country Core Strategy, adopted in February 2010, has included DSDA in a

proposed regeneration corridor, where investment is to be concentrated and supported by transport and other infrastructure. More recently a large part of the Darlaston area has been designated as an Enterprise Zone and the Council has consulted on a Local Development Order to promote the development of industry and warehousing.

- 3.3 The highways scheme is considered essential to unlock the economic potential of the DSDA in support of the approved Enterprise Zone status for much of the area, including the proposed remediation of the former IMI site in Darlaston Road (currently owned by Homes and Communities Agency). All regeneration stakeholders have indicated their support for the highways scheme and acknowledge its enabling role in achieving regeneration objectives. It is believed that the DSDA could ultimately create up to 2,800 jobs, thereby offering significant opportunities to local people.
- 3.4 A major scheme business case for the proposed highways improvements was submitted to the Department for Transport (DfT) in March 2010.
- 3.5 The scheme has the support of stakeholders across the West Midlands Metropolitan Area through the West Midlands Local Transport Plan 2011 and is considered a priority for delivery in the period up to 2016.
- 3.6 The appraisal of the business case was put on hold by DfT in 2010 because of the May general election; the June emergency budget; and the October Comprehensive Spending Review. In November 2010, the DfT asked for an Expression of Interest (EoI) document to be completed which summarised the scheme proposals; addressed how the scope of the project could be reviewed; identified potential cost savings; indicated if and how the funding package can be improved; and acknowledged that project risk will be the sole responsibility of the Council. This was duly completed and submitted to the DfT on 4<sup>th</sup> January 2011.
- 3.7 The Council was subsequently invited to submit a Best and Final Funding Bid by September 2011. This was duly completed and submitted to the DfT on 8<sup>th</sup> September 2011. Through value engineering and cost saving measures introduced, a new scheme cost of £25.908m was derived. On the 14<sup>th</sup> December, 2011 the DfT gave approval to the scheme business case and awarded it 'Programme Entry' status.

### **Description of Scheme**

- 3.8 The scheme described in the September 2011 Best and Final Funding bid includes improvements to outdated highways infrastructure in Bentley Road South, Bentley Mill Way, Wallows Lane/Bescot Road junction and Darlaston Road/Bescot Road junction. The proposed alignment is set out in **Appendix A**. This scheme has a total capital cost of £25.908m (including allowances for inflation and risk), of which £12.321m is required locally (Walsall Council, Centro and Private Sector). The September 2011 programme indicated that the scheme could be completed and open by late 2014/15.

### **Bentley Road South Rail Bridge**

3.9 As part of the Best and Final Funding Offer (BFFO) submitted to the DfT in September 2011, Walsall Council through negotiation agreed that Network Rail would retain ownership of the railway bridge. This ensured that the reconstruction would be lead by Network Rail. Funding would be provided by Walsall Council. A works agreement would be implemented to set out clear terms and conditions relating to costs.

3.10 As part of the BFFO Network Rail set out initial cost estimates for the scheme based on their current framework rates, which were as follows:

Item	Cost
Prelims	£253,270
Possession Management	£35,230
Isolations	£47,450
Construction	£1,347,511
Contractors OHP	£168,346
NR Project delivery Costs	£77,072
Feasibility & Design Costs	£75,000
Contingency	£200,238
<b>TOTAL</b>	<b>£2,204,267</b>

\*costs accurate at 9<sup>th</sup> September 2011

3.11 Following the submission of the BFFO, significant work has been carried out on the design, planning and investigation of the bridge construction. Both Walsall Council and Network Rail's Legal teams have been working together to agree the final detail of the Works Agreement.

3.12 The Network Rail works agreement contains the following clauses which will have a potential financial impact on the DSDA budget:

- Before the commencement of the Works, Network Rail shall prepare an itemised estimate and a spend profile of its costs charges and expenses, which shall be submitted to the Council and shall take reasonable care to ensure that such estimate is as accurate as possible. In the case of costs estimated for Clause 7.2.3 (from NR works agreement) Network Rail shall also indicate the likelihood of each item of expenditure actually being incurred.
- If it becomes apparent that the actual costs are likely to exceed the estimate provided by Network Rail under Clause 8.1 by more than 10%, or that the time scale for completion of the Works has changed significantly, a revised estimate and spend profile shall be provided to the Council.
- **The Council shall pay Network Rail's actual costs charges and expenses whether they are greater or less than the estimated sum.**

3.13 Tony Gee & Partners have been appointed by Network Rail to lead on the bridge design following Mouchel being placed in administration. The designers have proposed a different solution which will result in less onerous construction methods being required.

3.14 Network rail have booked track possessions for October 2013 and December 2013 to carry out the demolition and construction of the bridge. Walsall Council will be responsible for the site clearance and utility diversions.

### **Compulsory Purchase Order**

3.15 The Compulsory Purchase Order (CPO) was published on Friday 7<sup>th</sup> December 2012. The order now contains 80 plots of land that either need to be acquired or gain access rights.

3.16 Although permission was granted to publish the CPO by Cabinet on the 25<sup>th</sup> July 2012, there has been a requirement to include additional plots due to a Legal requirement for Exchange Land. This has taken significantly longer than expected to resolve. The additional work has added on 3 months to the CPO Programme which has a knock on effect in when the DfT Full Approval Application will be submitted.

3.17 Some objections are anticipated and it may therefore result in a Public Inquiry being held. This is expected to take place in April 2013.

3.18 Although the CPO has meant a delay in the Full Approval Application being submitted, there are other deadlines which need to be met to ensure the risks on the project are kept to a minimum and Walsall Council still have access to the DfT Funding. These are:

- The Walsall Transportation Capital programme Framework expires on the 31<sup>st</sup> October 2013
- The DfT are expecting construction work to begin in the summer of 2013 in accordance with conditions of being awarded Programme Entry
- Track possessions take 2 years to book in advance
- Prices for materials and labour will continue to increase in line with inflation, but the budget available remains the same
- If construction time scales are not met it may result in the DfT withdrawing funding
- Bentley Road South Railway bridge is situated on the main West Coast Diversion route and due to the ongoing works at New Street Station it will be difficult to rebook the possession dates without encountering lengthy delays

### **Way Forward**

3.19 To ensure that the project is delivered to time and budget and to keep the risks to a minimum Cabinet are asked to consider 2 options detailed below. Option A has higher short term risks which would result in a reduction in the overall scheme risk. Option B is the low risk option, but significantly increases the risks in the long term of costs increasing and the loss of the overall funding from the DfT.

## Option A

- 3.20 To minimise risk to Walsall Council, Network Rail have agreed to retain ownership of the bridge during and after the construction work has been completed. This allows a simpler in house process to be followed that will see Network Rail commission and supervise works in relation to Bentley Road South Rail Bridge. Walsall Council would just provide the funding for the project.
- 3.21 In order to meet the track possession dates booked by Network Rail the sequencing of work and timescales will need to be as follows:
- Network Rail start tender process – January 2013
  - Land needs to be transferred to Network Rail – Jan 2013
  - Walsall Council sign Works Agreement – March 2013 (latest)
  - Network Rail award contract for Bridge construction – April 2013
  - Walsall Council divert utilities – April to June 2013
  - Grouting works commence – June to September 2013
  - Bridge construction work commences (offline) – September 2013
  - Bridge Demolition (track Possession) – October 2013
  - New Bridge lifted in place – December 2013
- 3.22 It had been anticipated that the CPO would be completed before the works agreement needed to be signed. However due to the delay in publication it has resulted in works needing to be commissioned ahead of Full Approval in order to still meet the DfT timescales.
- 3.23 Network Rail require the works agreement to be signed before a contractor can be appointed to deliver the new bridge. This would result in Walsall Council being liable to pay for the cost of the bridge reconstruction regardless of the result of the CPO and whether the DfT granted Full Approval.
- 3.24 The Darlaston SDA scheme was also cited in the HM Treasury Autumn Statement (page 37) published on the 5<sup>th</sup> December as starting on site in 2013.
- 3.25 Once the railway bridge works have been completed it would then facilitate European Metal Recycling (EMR) to submit an application to Network Rail for a rail head into their premises. The new rail head would allow EMR to expand their operations at this site and create new jobs.
- 3.26 The original estimate for the bridge works was £2.2m including a risk allowance. However through redesign this cost is expected to be significantly lower due to a reduction in the amount of construction work that needs to be undertaken.
- 3.27 Walsall Council has agreed with Centro that up to £3.5m of the £5m contribution towards the scheme can be drawn down in advance of Full Approval being granted. Should the scheme not receive Full Approval from the DfT as part of the Centro Grant conditions the funding would be required to be paid back in full subject to the request of the Integrated Transport Authority members.
- 3.28 Repayment of the Centro Grant would be met from the LTP Capital programme over a number of years yet to be determined.

3.29 Due to 4 other schemes being granted Programme Entry across the West Midlands in 2011, the original level of contribution from Centro has been reduced from £5.665m to £5m. In order deliver the scheme within the funding available it is essential that Walsall Council adopt a construction programme that will deliver the scheme on time and budget. Walsall Council has agreed with the DfT to meet any cost increases in full should the budget exceed £25.908m. Allowing the construction work for Bentley Road South Railway Bridge to commence first will remove a significant amount of risk from the overall project.

## **Option B**

3.30 Option B would result is a suspension of all planned works once the Target Cost work has been completed. The Target Cost is the process by which Walsall Council and the contractor Birse Civils Ltd will agree the price for all Civil Engineering works prior to the submission to the DfT. Once the CPO and any subsequent Public Inquiry is held it could take up to 3 months before the Secretary of state makes a formal decision.

3.31 No works agreement with Network Rail would be signed until the DfT had granted Full Approval.

3.32 This would result in a requirement for new track possessions to be booked. There is usually a 2 year lead in period and there would be heavy demand for possessions on this line due to the New Street Station works continuing until 2015.

3.33 The delay would also result in the highway works being commissioned in advance of the bridge works. The highway alignment could not be completed along Bentley Mill Way until the network rail Bridge is in place. Should there be any further delays in the railway bridge being delivered under new track possessions it would result in claims being submitted by Birse Civils Ltd.

3.34 Cancelling the existing possessions would result in the Council safeguarding its financial position whilst it waits for Full Approval to be granted by the DfT.

3.35 However the Best and Final Funding Offer submitted in September 2011 included a market value price based on construction works commencing in the summer of 2013. Delaying construction works would mean an increase in the cost of the works due to inflation and a large increase in the risk associated with the project due to potential claims being submitted. It could mean that the scheme budget of £25.908 is exceeded and the Council would be liable for any cost overruns in full.

3.36 Cancellation of the track possessions would result in a significant delay to the expansion of the EMR site in a period of time when the creation of local jobs are seen as essential to boosting the local economy.

## **Risks and Mitigation**

3.37 Listed below are the key risks that may occur during the construction period, which may result in the cost of the bridge escalating.

- Utility diversions are not completed in time which prevents demolition work being carried out.
- Network Rail forced to cancel track possessions due to demand elsewhere on the network.
- Site clearance not completed due to bird nesting.
- Adverse weather prevents work being completed within a set time frame.
- Delay in starting the bridge construction will have a knock on effect on the highways construction programme, with potential for claims.

3.38 Below is a list of measures taken so far to mitigate any cost over runs.

- Advance site clearance to begin after Christmas to avoid the bird nesting season
- Temporary scaffolding to be erected in spring to allow BT to divert cables well in advance on demolition works
- Orders for utility diversions to be placed early in the new year to ensure sufficient lead in time.
- Key assurance gained at BT and Network Rail at director level to ensure work is carried out to time and commitments for possessions are kept.
- Tony Gee appointed by NR and Birse Civils Ltd to ensure there are no conflicts within the design.
- A site compound is already setup, winning contractor will remove these costs as they are paid for through the main highways contract.
- Additional track possessions can be booked easily by Network Rail if required.
- Design of bridge revised to reduce construction costs

3.39 The risk for the whole project still remains with Walsall Council regardless of which option is chosen. Option A will provide the least amount of risk to the Council over the course of the whole project and provide the Council with greater certainty that the project will be delivered within the agreed budget.

3.40 To ensure that Walsall Council has sufficient liability cover for any work undertaken by Birse Civils in advance of full highway construction commencing it will be necessary for sign a package order for the remainder of the Early Contractor Involvement. This is to ensure that a formal contract is in place when any bore holes are undertaken on Coal Authority land.

3.41 There is sufficient budgets available to pay for all of the ECI works from IT Block funding without the need to draw down on Centro or DfT contributions.

#### **4. Council priorities**

4.1 The construction of an improved road network in the DSDA will benefit all sections of the community by providing better links between major distributor roads. The redevelopment of derelict land in the DSDA is projected to provide new jobs, many of which will directly benefit the local community. Facilitating new investment in job opportunities in the DSDA is the ultimate objective of the highways project.

4.2 Receiving Programme Entry is a key stage in the bid to provide new highway infrastructure, which itself will support the regeneration of the area. The proposed



highway improvements will be designed and constructed to the latest standards and permit new links within the area thereby benefiting all road users including cyclists, pedestrians, the elderly and children.

- 4.3 The DSDA is adjacent to the busy M6 motorway and in an area where there is known ground contamination. However, the impact of the highway proposals is limited to a small geographic area and the Planning Authority has confirmed that the proposals do not require an Environmental Impact Assessment. An initial scoping study has already been undertaken, and site investigation prior to construction will address any outstanding issues.

## **5. Risk management**

- 5.1 Risk: The approvals sought in this report will enable officers to progress project appraisal and ultimately obtain final funding approval.
- 5.2 At this stage the key risk to the project is financial – as with all projects that are funded by central government, there is no guarantee that the project will receive full and final approval. The project received Programme Entry from the DfT on the 14<sup>th</sup> December, 2011.
- 5.3 Failure to secure Full Approval will result in abortive costs relating to the CPO, utility diversions and staffing costs incurred to date to move the scheme forward. The Council will not be tied into any contracts with the Civil Engineering contractor until after Full Approval is received.
- 5.4 As part of the Comprehensive Spending Review and the reduction in all departmental budgets, the DfT have removed the overall risk layer on major transport projects. The implication for Walsall Council is that the scheme has to be delivered for the amount agreed with the DfT. Any overspend on the project costs will have to be met in full by the local authority.
- 5.5 There are other key risks that will apply throughout the project and irrespective of the DfT's funding decision. The following have been identified and actions taken to mitigate wherever practicable as follows: -
- Design – the scheme includes an aqueduct and two bridges. Liaison with Network Rail and British Waterways is a prerequisite to ensure delivery – there is a risk they could formally object to elements of the scheme. British Waterways have been fully involved in the design process of the canal bridges and Bentley Bridge has been successfully delivered as part of the advance works.
  - Partners – formal project management arrangements have been put in place with a Joint Board and Strategic Management Team to ensure coordination and effective delivery.
  - Ground conditions – the Council is responsible for ground conditions on land directly affected by the highway proposals. Ground investigation has taken place to identify contaminants and inform mitigation measures; further work will now be undertaken.

- Programme & land acquisition – although the Council’s Estates & Assets Management Team have been liaising with affected landowners, it is evident that all necessary land cannot be acquired by negotiation. Consequently, statutory orders have been prepared and the project programme has been developed to allow for a possible local public inquiry associated with a Compulsory Purchase Order. There is also the risk that the Secretary of State may not confirm the order.
- Public relations – promoting the scheme has the potential to blight land and properties. Progressing the detailed design of the scheme will help mitigate this risk. Legal support will also help manage any such issues, should they arise. Residents in Pleck may object to the short- and long-term implications of constructing the scheme, when the ultimate objective is to bring new employment investment to the neighbouring area of Darlaston. A high-profile public consultation and PR exercise carried out in summer 2009 and a follow-up campaign in 2011 have helped local people understand why the Council is promoting the project and reassure people about the short-term inconvenience and long-term benefits. A key aim of all consultation has been to reduce the risk of possible objectors forcing a local public inquiry.

## 6. Financial implications

### Overall funding

- 6.1 A funding package has been set out to cover the work required for this scheme to completion in 2016/17. This package includes all relevant spend, and includes funding contributions from:
- DfT - £14.316m
  - Centro - £5.665m
  - Council funding of £5.664m (including advance works already incurred)
  - Private sector contributions of £0.992m.

### Funding of the bridge work

- 6.2 The bridge work needs to be done in advance of other works, and there is a lead in time for Network Rail to tender for the work. Therefore an agreement will be signed in advance of full approval with Network Rail for the Council to cover the costs of the work to the bridge.
- 6.3 This cost (estimated at approximately £1.8m) will be met from an advance payment from Centro of at least £2.5m (and up to £3.5m depending on Centro’s cashflow) – this will be taken from the contribution of £5.665m.
- 6.4 The advance payment from Centro along with a £0.375m contribution from the Integrated Transport Block will also cover the purchase of land and staff costs.
- 6.5 The Centro grant conditions state the expenditure must be capital. As the bridge belongs to Network Rail the work would not appear on the Council’s Balance Sheet, although it would be capital in nature. *Assurance is being sought from Centro that this expenditure will still qualify under the terms of the grant.*

## Financial risks

6.6 The most significant risk is that DfT do not grant full approval and Centro request their advance back. This would leave the Council with no external funding to cover an estimated cost of £3m as follows:

- i. £1.8m bridge work
- ii. £1m land acquisitions
- iii. £0.2m staff time

It is expected we will get full approval, but if not then it would be down to the Centro board to decide whether to ask for the advance back

6.7 There are a number of other financial risks to be aware of:

- i. Per the agreement with Network Rail the costs of the bridge work will be met by the Council, with the Council taking the risk on any overspends. The budget allocated for the work on the bridge has been evaluated by external consultants, and should be sufficient. If not there is contingency in the model to pick up some overspends, but the risk would remain that this would be insufficient and an additional liability to the Council.
- ii. The Council is currently underwriting the contributions from other land developers:
- iii. These are £0.098m (land) from European Metal Recycling (EMR); £0.094m (land) from J H Holland Limited; and £0.800m (cash) from Parkhill Estates Limited. The Parkhill contribution will not now be forthcoming. Cabinet previously agreed to underwrite these contributions should they not arise. The council could therefore have additional costs, but aims to try to mitigate these as much as possible. Updates will be provided as the scheme progresses.
- iv. The grant funding stipulates spend must be capital. Whilst the expenditure will be capital in nature under accounting rules it will not all be on council assets. Under previous projects capital spend on non council assets has qualified for the use of grants Assurance will be sought to ensure that remains the case
- v. Centro have agreed in writing to contribute £5m and for now the council has underwritten the other £0.665m. Negotiations are ongoing to Centro for the other £0.665m.

## 7. Legal implications

- 7.1 The acquisition of land and property to implement the scheme requires appropriate legal support. Following a decision of Cabinet in November 2008, Cobbetts LLP were appointed to provide external legal support in line with Council guidelines.
- 7.2 GVA have been appointed to lead on the negotiations for the land acquisition required on behalf of Walsall Council. They have lead on negotiated sales to date and will continue to advise throughout the CPO process that is now required.

## **8. Property implications**

- 8.1 Land that is acquired through the CPO will be transferred to Walsall Council. The majority of the land will be used for the construction of the new highway alignment. However in the case of Beswick House, the building will be demolished, some land taken for construction purposes and the remainder will placed back on the market.

## **9. Staffing implications**

- 9.1 The Council will need to continue to commit staff resources to the project in order to negotiate with landowners and other interested parties; conduct public consultation; for project management; to progress the detailed design; and to support the implementation of any statutory orders that may be required. In addition to site supervision required once construction commences.
- 9.2 Staff from the Transportation Strategy and Policy team (Regeneration) and Major Projects and Minor Improvements (Neighbourhoods) have formed one team to take forward the project following Cabinet approval received in April 2012.
- 9.3 As the project evolves further staff will be required to fulfil supervisory roles for construction work. There are sufficient budgets to cover all staffing needs for the duration of the project.

## **10. Equality implications**

- 10.1 The proposed improved highway network will provide improved transport links into the regenerated area. The scheme will greatly improve conditions for pedestrians and cyclists. Footway improvements will cater for use by disabled people.
- 10.2 A full design and access statement will be produced in support of all of the scheme once the CPO has been confirmed and all of the land required to deliver the scheme has been purchased and transferred into Walsall Council ownership.

## **11. Consultation**

- 11.1 There has already been consultation with key stakeholders, residents and businesses that may be partially or significantly affected by the proposals. In conjunction with regeneration officers, consultation will be ongoing and developed as an integral part of the development of the project.

11.2 Further consultation and engagement will continue during the build up towards construction and during the works whilst out on site.

## Background papers

### Author

Stuart Everton  
DSDA Programme Manager  
☎ 654770  
✉ [evertons@walsall.gov.uk](mailto:evertons@walsall.gov.uk)



Tim Johnson  
Executive Director  
Regeneration

23 January 2013



Councillor Tom Ansell  
Portfolio holder Transportation  
& Environment

23 January 2013



Councillor Adrian Andrew  
Deputy Leader  
Portfolio holder Regeneration

23 January 2013