

# REPORT FOR DECISION



<b>DECISION OF:</b>	<b>CABINET</b>
<b>DATE:</b>	<b>31st JANUARY 2018</b>
<b>SUBJECT:</b>	<b>PROPOSED COMPULSORY PURCHASE ORDER RELATING TO LAND AND AIR SPACE AT KAY STREET BRIDGE IN SUMMERSEAT</b>
<b>REPORT FROM:</b>	<b>CABINET MEMBER FOR CORPORATE AFFAIRS AND REGULATORY SERVICES COUNCILLOR JUDITH KELLY</b>
<b>CONTACT OFFICER:</b>	<b>David Fowler</b>
<b>TYPE OF DECISION:</b>	<b>KEY DECISION</b>
<b>FREEDOM OF INFORMATION/STATUS:</b>	This paper is within the public domain <b>Apart from</b> Appendix 1 which is Exempt for Publication by virtue of Paragraph 3 of Schedule 12A of the Local Government 1972 as amended (exempt information relating to financial or business affairs of the Council).
<b>SUMMARY:</b>	<b>This report seeks Cabinet approval to undertake highways works, negotiate on an agreed sale of the land and air space required for the scheme and the use of compulsory purchase powers.</b>
<b>OPTIONS &amp; RECOMMENDED OPTION</b>	<p><b>Option 1</b></p> <p>That Members agree to:-</p> <ol style="list-style-type: none"> <li>1. Undertake the highways works necessary to facilitate the re-opening of Kay Street Bridge, Summerseat.</li> <li>2. Authorise the Head of Property and Asset Management and Interim executive Director of resources and regulation in consultation with the Cabinet member for Finance and Housing to negotiate and acquire the necessary land and air space by agreement.</li> <li>3. Authorise the making of a Compulsory Purchase Order (CPO) under the Highways Act 1980 and the Acquisition of Land Act 1981 to acquire land and</li> </ol>

	<p>air space adjacent to Kay Street Bridge as shown shaded in pink on the attached plan for highway purposes and to acquire associated access rights over the land and air space shown shaded in blue on the attached plan.</p> <ol style="list-style-type: none"> <li>4. Authorise the Council’s Assistant Director of Legal and Democratic Services to make, if necessary, minor or technical amendments to the CPO boundary as shown on the attached plan.</li> <li>5. Authorise the Council’s Assistant Director of Legal and Democratic Services to seal the Order and map and to take all necessary steps (including, without limitation, the publication of all required advertisements and statutory notices, the preparation of all necessary ancillary documents, dealing with any objections and inquiries and making any necessary modifications to the Order) to secure confirmation of the Order by the Secretary of State for Transport.</li> <li>6. Authorise the Council’s Assistant Director of Legal and Democratic Services (in the event that the Secretary of State for Transport notifies the Council that it has been given power to confirm the Order) to advertise and confirm the CPO, if satisfied that it is appropriate to do so and to secure the subsequent vesting and registration of the ownership of the land in the Council by the most appropriate means (including the agreement and payment of appropriate compensation).</li> </ol> <p><b>Option 2</b></p> <p>Not to proceed with the proposed Compulsory Purchase Order as outlined in the report and leave the bridge closed to vehicular traffic.</p> <p><b>Recommended Option</b></p> <p>Members are recommended to approve option 1.</p>
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<b>IMPLICATIONS:</b>	
<b>Corporate Aims/Policy Framework:</b>	Do the proposals accord with the Policy Framework?      Yes
<b>Statement by the S151 Officer: Financial Implications and Risk Considerations:</b>	Flood damage funding will be used to undertake the acquisition / works
<b>Health and Safety Implications</b>	All works undertake to deliver the required

	work would be fully compliant with current and relevant health and safety requirements.
<b>Statement by Executive Director of Resources (including Health and Safety Implications)</b>	Relevant Health & Safety practices will be followed when undertaking the works
<b>Equality/Diversity implications:</b>	No. It is considered that there are no negative impacts identified for affected groups.
<b>Considered by Monitoring Officer:</b>	Yes. The legal issues are contained in the main body of the report. This will involve legal resources to progress and confirm the CPO and to vest the land in the Council.
<b>Wards Affected:</b>	<b>North Manor</b>
<b>Scrutiny Interest:</b>	

## TRACKING/PROCESS

## DIRECTOR:

Chief Executive/ Strategic Leadership Team	Cabinet Member/Chair	Ward Members	Partners
January 8 <sup>th</sup> 2018	January 22 <sup>nd</sup> 2018		
Scrutiny Committee	Cabinet/Committee	Council	

## 1.0 BACKGROUND

### 1.1 Background

Kay Street Bridge forms part of the adopted highway network and is one of the main roads into the village of Summerseat.

1.2 The Bridge was damaged in the Boxing Day floods of 2015 when the former Waterside Inn partially collapsed and was subsequently demolished.

1.3 This left the bridge with no physical barrier on one side which has meant that since Boxing Day 2015 the bridge has been closed to vehicular traffic in the interests of highway safety.

1.4 As there is only one other road crossing over the River Irwell in Summerseat, all through traffic has to now use this alternate route which is ill suited to

accept such an increase in traffic. The route has, in parts, no footways, a single traffic lane, a height restriction and a blind bend which has necessitated the installation of temporary traffic signals in order to reduce potential conflict and mitigate safety concerns. This has led to issues with congestion in peak hours, drivers speeding and vehicles having to pass each other where substandard carriageway width exists.

- 1.5 The Council proposes to carry out remedial works to repair the damaged bridge to include a parapet and also to widen it for the provision of a separate footway.
- 1.6 In order to carry out these works, the Council requires land and air space in private ownership. The land and air space falls within two separate ownerships and the Council has contacted both landowners seeking to acquire their interests by agreement. It is hoped that agreement can be reached, however, in order to ensure the land and air space is acquired within a reasonable timeframe it is considered appropriate to start the CPO process to run in parallel with the negotiations.

## **2.0 ISSUES**

### **Land & Rights to be acquired**

- 2.1 The land to be acquired measures approximately 230 square metres. It comprises part of the river over which (up until the Boxing Day Floods of 2015) the Waterside Inn pub was constructed together with two small areas to the north and south of the river, encompassing an area of hard-standing to the north and a similar area of tarmac hardstanding to the south. The areas are identified shaded pink on the attached plan.
- 2.2 The Council will also require a maintenance easement over the land shown shaded in blue on the attached plan measuring approximately 175 square metres.

### **The Highways Works**

- 2.3 It will not be possible to implement a permanent signal installation solution which would increase safety concerns for all classes of road users.
- 2.4 In addition there is a loss of highway network resilience in Summerseat with only one bridge in operation. Any future flooding or other events that require the closure of the remaining bridge or the roads approaching it would mean that traffic would no longer be able to pass through Summerseat and would have to take the lengthy diversions via Ramsbottom (7 km) or Bury (10 km).
- 2.5 Kay Street Bridge was the principal route for public transport and members of the public that rely on buses would be disenfranchised as no viable alternative public transport solutions exist.
- 2.6 No suitable options exist that do not require 3rd party land. The prospect of widening the bridge on west side is severely constrained by the presence of a gas main pipe utility. Due to the former Waterside building acting as the east parapet to Kay Street Bridge, in order to bring the structure back into use by

vehicles, a new parapet would have to be installed. This would necessitate either reducing the carriageway width to make it even narrower than the previous width or constructing a cantilevered parapet which would require substantial alterations to the existing structure and would have aesthetic implications bearing in mind the structure is located in a conservation area.

- 2.7 The proposed highway works will reconstruct the bridge slightly wider in order to accommodate a segregated footway (a feature that was missing from the original structure) in order to improve safety by reducing the need for pedestrians, cyclists, equestrians and vehicles to share the same, narrow road space. The structure is located in a Conservation area and the proposed works seek to preserve the character of the bridge which will be faced in natural stone to match the existing.  
Environment Agency consent is required to work in the river and an approval in principle has already been granted (Ref EPR/RB3955PA, dated 05 July 2017).
- 2.8 Planning permission will be required and this will need to be in place before the CPO can be confirmed. Pre-application discussions have been held with the Planning Department who have indicated that they have no objection in principle to the proposal so long as the design appropriately takes account of the setting of the Conservation area. The planning application will be subject to consultation with the public and statutory consultees.

### **Statutory Powers**

- 2.9 The Council has a duty to keep adopted highways in such a state as to be safe for the ordinary traffic which may reasonably be expected to use them. The Council also has powers to carry out improvements to the highways under Part V of the Highways act 1980 and the proposed works will facilitate the safe, unhindered passing and re-passing by members of the public along the highway.
- 2.10 Sections 239 and 240 of the Highways Act 1980 empowers local highway authorities to acquire land for the construction or improvement of a highway. These rights are subject to distance limits (220 yards from the middle of the highway or proposed highway) and the land to be acquired falls within these limits.
- 2.11 In relation to the proposed maintenance easement, Section 250 of the Highways Act 1980 gives highway authorities the power to acquire rights over land by creation as well as the acquisition of existing rights.
- 2.12 The procedure for the making and confirmation of compulsory purchase orders is set out in the Acquisition of Land Act 1981. This provides that notification is given to all owners/occupiers and other persons with an interest in the land and that the order is advertised in a local newspaper. The order is then submitted to the Secretary of State for confirmation. If objections are received, it is likely that an Inquiry will be held for the objections to be considered. If the Order is confirmed, the Council may then take steps to take possession and ownership of the land.
- 2.13 Statutory compensation is payable for the compulsory acquisition of interests in land and this is detailed in the Financial Considerations section below.

## **Justification for CPO / Human Rights Considerations**

- 2.14 A compulsory purchase order should only be made where there is a compelling case in the public interest. When considering Compulsory Purchase Order proposals, the local authority has to have regard to the impact the proposals may have on human rights and in particular, Article 1 of the of the First Protocol to the European Convention on Human Rights.
- 2.15 Article 1 provides that "Every person is entitled to the peaceful enjoyment of his possessions" and "No one shall be deprived of his possessions except in the public interest and subject to the conditions provided for by Law".
- 2.16 The Council must strike a fair balance between the demands of the local community and the need to protect individual's fundamental rights. The proposed highway works will result in an improvement to the highway network enabling the bridge which has been closed to vehicles for nearly two years to be re-opened and the footway will improve pedestrian safety. The land to be acquired comprises a small area which is unoccupied and most of it is currently airspace.
- 2.17 Consideration must also be given to the protection of the owners' rights through the statutory objection and inquiry procedure and that if the proposed CPO is confirmed, the owners will be entitled to receive market value compensation in respect of the properties.
- 2.18 The CPO will affect the Article 1 rights of the present owners if confirmed by the Secretary of State. However, it is considered that there will be no violation of those rights as the Council is content that the steps taken are in the public interest and lawful as required by Article 1 of the First Protocol. Those owners directly affected by the CPO will be entitled to compensation as provided by law, such compensation to be settled in the absence of agreement by the Upper Tribunal of the Lands Tribunal.
- 2.19 It is therefore considered that the CPO action is, on balance proportionate and justified in the public interest. The interference with the fundamental rights is no more than is reasonably necessary to achieve the legitimate aim being pursued.

## **Consultation & Engagement with Affected Landowner**

- 2.20 Both landowners have been notified of the Council's intention to use CPO powers to acquire the land and air space. The Council has obtained independent valuations for the value of the land and air space to be acquired and the associated easement. Negotiations to acquire the land and air space by agreement with the landowners will continue alongside the CPO process.

## **Financial Considerations**

- 2.21 An assessment of the total compensation that may be due to the two affected land owners has been made and financial provision has been made for such sums to be expended.
- 2.22 Authorisation is sought to delegate the negotiation and subsequent acquisition of the land and air space interests required by the Council to the Head of Property and Asset Management and Interim Director of Resources and Regulation in consultation with the Cabinet Member for Finance and Housing.

#### Legal Costs.

These will include the publication of all required advertisements and statutory notices, the preparation of all necessary ancillary documents and evidence, dealing with any objections, securing the subsequent vesting and registration of the ownership of the land in the Council. These will largely be internal costs but there will be some disbursements such as advertising costs and Land Registry fees.

### **3.0 CONCLUSION**

3.1 The report concludes that that:-

- The Council carries out remedial works to repair the damaged bridge to include a parapet and also to widen it for the provision of a separate footway.
- Wherever possible the Council should seek to acquire the necessary land and air space by agreement.
- There is a compelling case in the public interest for making a CPO
- Interference with the landowners' human rights is proportionate and justified in the public interest
- There are no financial, physical, planning, legal or other impediments to the highway works proceeding and that there is a reasonable prospect that they will proceed

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#### **Contact Details:-**

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