


REPORT TO CABINET

09 December 2020

Subject:	A4123 Birchley Island/M5 Junction 2 Improvement
Presenting Cabinet Member:	Councillor Jackie Taylor - Cabinet Member for Sustainable Transport
Director:	Interim Director – Regeneration and Growth – Tammy Stokes
Contribution towards Vision 2030:	
Key Decision:	Yes
Cabinet Member Approval and Date:	Yes
Director Approval:	Yes
Reason for Urgency:	Urgency does not apply
Exempt Information Ref:	Exemption does not apply
Ward Councillor (s) Consulted (if applicable):	Boroughwide
Scrutiny Consultation Considered?	Scrutiny has not been consulted
Contact Officer(s):	Andy Miller Strategic Planning & Transportation Manager andy_miller@sandwell.gov.uk Robin Weare Service manager Highways robin_weare@sandwell.gov.uk

DECISION RECOMMENDATIONS

That Cabinet:

1. Approves the revised layout of the proposed A4123 Birchley Island/M5 Junction 2 Improvement as shown on Drawing No. P60479226/SK/220 Rev 4 (Appendix A).

Subject to recommendation 1 being agreed;

2. Authorises the Interim Director – Regeneration and Growth to use the Council's Compulsory Purchase powers to acquire land and property required for the approved revised scheme at A4123 Birchley Island/M5 Junction 2 in the event that the land required for the scheme cannot be assembled/acquired through other means.
3. Authorises the Interim Director – Regeneration and Growth to enter into negotiations and to acquire, on terms to be agreed by the Director of Regeneration & Growth, land and property within the proposed Order lands, in advance of confirmation of the Compulsory Purchase Order by the Secretary of State subject to the availability of finances.
4. Authorises the Director of Law and Governance and Monitoring Officer to undertake all necessary actions and steps to make and secure a Compulsory Purchase Order in respect of the land needed for highway improvement purposes shown shaded pink and blue on drawing No. P 60479226/CPO/01/01 and more particularly, marked "Map referred to in Borough Council of Sandwell (A4123 Birchley Island/M5 Junction 2 Improvement, Oldbury) Compulsory Purchase Order" or such lesser land as may be deemed necessary under the powers contained in sections 239, 240 and 250 of the Highways Act 1980 subject to the conclusion of an agreement with Highways England under section 6 (1) of the Highways Act 1980.
5. Authorises the Director of Regeneration & Growth to make any necessary minor amendments to the Borough Council of Sandwell (A4123 Birchley Island/M5 Junction 2 Improvement, Oldbury) Compulsory Purchase Order and the "Map referred to in Borough Council of Sandwell (A4123 Birchley Island/M5 Junction 2 Improvement, Oldbury) Compulsory Purchase Order" prior to it being made and submitted for confirmation.
6. Authorises the Director of Law and Governance and Monitoring Officer to affix the common seal of the Council and serve the necessary notices and documentation as required by the Highways Act 1980 and Acquisition of Land Act 1981 and submit the Compulsory Purchase Order to the Secretary of State for Transport for conformation.

7. Authorises that in the event the Compulsory Purchase Order is unopposed and granted powers to do so by the Secretary of State for Transport, the Director of Law and Governance and Monitoring Officer to confirm the above order and serve all necessary notices to implement the Compulsory Purchase Order including the issuing of sheriff warrants.
8. Authorises the Director of Law and Governance and Monitoring Officer to enter into any licences, undertaking or other agreements to facilitate the Compulsory Purchase Order on terms to be agreed on terms to be agreed by the Director of Regeneration & Growth.
9. Authorises the Director of Law and Governance and Monitoring Officer to make the Borough Council of Sandwell (A4123 Classified Road) (Side Roads) Order as shown on drawing No. P 60479226/SRO/01/01 (attached) under the powers contained in sections 14 and 125 of the Highways Act 1980.
10. Authorises the Director of Regeneration & Growth to make any necessary minor amendments to the Borough Council of Sandwell (A4123 Classified Road) (Side Roads) Order prior to it being submitted for confirmation.
11. Authorises the Director of Law and Governance and Monitoring Officer to affix the common seal of the Council and serve the necessary notices in accordance with the provisions of Schedule 1 of the Highways Act 1980 and submit the Sides Road Order to the Secretary of State for Transport for conformation.
12. Authorises the Director of Law and Governance and Monitoring Officer to take all necessary action to secure the making, confirmation and implementation of the Compulsory Purchase Order and Side Roads Order and if objections are received to the Compulsory Purchase Order and Side Roads Order make arrangements for public inquiries including instructing external Counsel and Consultants to assist in the preparing evidence and the presentation of the Council's case at any public Inquiry.
13. Resolves that in the event that the Compulsory Purchase Order and Side Roads Order is confirmed by the Secretary of State for Transport, authorises the Director of Law and Governance and Monitoring Officer to serve all necessary notices to implement the powers of compulsory acquisition, including be authorised to make General Vesting Declarations, notices to treat and notices of entry to take all other requisite steps to obtain possession of the properties and to obtain a Sheriff's Warrant for possession of any lands where it has not been given.

14. Authorises the Director of Law and Governance and Monitoring Officer acquire the necessary interests in the land and property included in the confirmed Compulsory Purchase Order on terms to be agreed by the Director of Regeneration & Growth or as ordered by the Lands Tribunal.
15. The Interim Director for Regeneration and Growth, in consultation with the Cabinet Member for Inclusive Economic Growth and the Acting S.151 Officer, be authorised to accept the LEP Main Scheme funding for the scheme upon such terms and conditions as are considered appropriate.
16. Resolves that recommendations 3, 4, 5, 9, 10 and 11 referred to in the report to Cabinet on 13th June 2018 (Cabinet minute 86/18) be not proceeded with.

1 PURPOSE OF THE REPORT

- 1.1 This report seeks approval to revised proposals for the improvement at Birchley Island/M5 Junction 2.
- 1.2 Approval is also sought for the making and submitting of Compulsory Purchase (CPO) and Side Roads (SRO) Orders to the Secretary of State for Transport in order to secure the statutory powers needed to enable the revised scheme to be constructed subject to the confirmation of funding by the Department for Transport and West Midlands Combined Authority.

2 IMPLICATION FOR VISION 2030

- 2.1 Improvements to the motorway network and its junctions form an important component of the overall transport strategy set out in the West Midlands Strategic Transport Plan – Movement for Growth, the Black Country Core Strategy and Sandwell's individual Development Plan Documents. The proposed improvements at Birchley Island/M5 junction 2 will contribute to a safe and efficient transport system. This in turn will assist in achieving the Council's 2030 ambitions Nos. 6, 7 and 9 by improving access to facilities and services, and to jobs, improving the environment and contributing to the economic wellbeing of the borough through improved links to national and international markets.

3 BACKGROUND AND MAIN CONSIDERATIONS

- 3.1 As part of the process for adopting the Black Country Core Strategy, the Highways Agency (now Highways England [HE]) requested that proposals to improve Junctions 1 and 2 of the M5, and junctions 9 and 10 of the M6 be prioritised in order for the plan to be considered 'sound'. This was accepted by the four local authorities at the Examination in Public (EIP) in July 2010. As such the improvement at Birchley Island/Junction 2 is a vital element of the strategy for Regeneration Corridors 12 and 13 of the BCCS. Without the proposed improvement, the growth envisaged in these corridors cannot be sustained. This position was strengthened further at the EIP for the Sandwell Site Allocations & Delivery Plan and the West Bromwich Area Action Plan in February 2012.
- 3.2 The BCCS is now under review and the new Black Country Plan that will succeed it will provide the strategic framework for development across the four Black Country boroughs to 2039. The Plan needs to identify additional growth in both housing numbers and employment land over and above that envisaged in the BCCS of 2011. Therefore, the strategic requirement to improve Birchley Island is further strengthened.
- 3.3 The problems encountered at the Birchley Island/M5 J2 junction complex were set out in detail in the Cabinets reports of October 2014, July 2016 and June 2018. In summary the junction complex suffers from;
- significant levels of congestion, not only at peak hours but throughout the day,
 - a poor accident record,
 - a lack of formal facilities for pedestrians and cyclists.
- 3.4 Cabinet approved proposals to improve the junction through the construction of a 'Hamburger' style arrangement on 27th July 2016. The scheme aims were to:
- Reduce delays and congestion - This will have a positive impact on Black Country businesses whose goods are transported through this junction onto the regional and national networks. It will support growth and increase regeneration opportunities.
 - Improve bus service reliability - This will assist in improving the attractiveness of buses and contribute to modal shift.
 - Reduce severance and improve pedestrian and cycle links - Safer and more convenient links will reduce the severance effect of the junction and its approaches.
 - Improve road safety - Improved junction control, lane markings and pedestrian/cycle facilities will reduce the potential for accidents.

- 3.5 Since approval work as continued on developing the business case for the scheme, on developing the design. This work included liaising with HE, the Government agency with responsibility for the Strategic Road Network which includes the M5 Motorway, the J2 roundabout and the link road between that roundabout and Birchley Island.

4 THE CURRENT POSITION

- 4.1 Because the scheme includes work on the link road between Birchley Island and the J2 roundabout, it is necessary to enter into a legal agreement under section 6 of the Highways Act 1980 to enable Sandwell to carry out these works. Cabinet gave approval to this in July 2016. As part of this agreement HE must give technical approval to the scheme.
- 4.2 As part of the process of achieving this technical sign off, HE requested further modelling work to be undertaken to ascertain the precise nature of any impact on the operation of the motorway. In the course of this modelling work, it became apparent that in certain traffic flow conditions, the potential exists for exit-blocking to occur on Birchley Island with a consequence of traffic queuing back through J2 which onto the motorway slip roads. This presents a risk to the safe operation of the motorway.
- 4.3 In order to address the HE concerns whilst retaining the original benefits of the scheme, a number of changes have therefore been made to the design. Of these, the most fundamental change is the shift from the 'hamburger' scheme adopted in 2016 to a more conventional upgrade to the existing roundabout but with significant widening of the approaches combined with some additional modifications to the M5 Junction 2 roundabout.
- 4.4 The proposed design widens the existing carriageway to either increase circulatory capacity or add additional lanes at the following points:
- Birchfield Lane approach widened to 4 lanes
 - Carriageway widened into central island between A4123 Wolverhampton Road South and Birchfield Lane to increase circulatory capacity
 - Churchbridge approach widened to 4 lanes
 - Carriageway widened into central island between Churchbridge and motorway link road
 - Motorway link road between M5 J2 and Birchley Island widened to 4 lanes in both directions
 - East circulatory at M5 J2, between southbound off-slip and southbound on-slip, widened on inside to 5 lanes

- 4.5 The modified scheme continues to meet the aims and objectives of the scheme and achieves a good benefit to cost ratio (BCR). Typically, schemes with a BCR of below 2.0 are unlikely to be funded. Following detailed modelling work the BCR has been calculated as 4.4 which falls within the “Very High” value for money category as defined by the DfT. It is therefore considered to be well placed to attract funding.
- 4.6 A revised Outline Business Case featuring the modified scheme was submitted to the Department for Transport on 5th November seeking finance from the MRN fund. Whilst there is no laid down timeframe for DfT to respond to this, it is anticipated that a decision on the scheme’s funding will be received in the new year.
- 4.7 Subject to the successful outcome of the MRN funding application the following programme is envisaged;
- March 2021 - Complete land acquisition by negotiation
 - September 2021 - Make Compulsory Purchase and Side Roads Orders
 - September 2021 - July 2022 Statutory Order Process (including a possible Public Inquiry)
 - September 2022 - Submit Full Business Case
 - November 2022 - Start of Construction
 - February 2026 - Completion

5 CONSULTATION (CUSTOMERS AND OTHER STAKEHOLDERS)

- 5.1 Stakeholder consultation on options took place during summer 2014. Full details are contained in the reports to Cabinet on 29th October 2014 and 18th February 2015.
- 5.2 Following the revisions to the proposals as outlined in this report, a virtual public exhibition of the modified scheme was carried out between 9th and 27th November 2020. A summary of the comments received is contained at Appendix D.

6 ALTERNATIVE OPTIONS

- 6.1 Four options were considered during the feasibility stage. These were;
- a) Minimum modifications
 - b) Two-way ‘hamburger’
 - c) One-way ‘double hamburger’
 - d) Replacement of the roundabout with a traffic signal junction

Option (b) was adopted as the preferred option as it provided the best combination of benefits and affordability at that time. Full details of these options and the reasons the preferred option was chosen are contained in the reports to Cabinet on 29th October 2014 and 18th February 2015.

- 6.2 However, following the detailed technical appraisal carried over the last twelve months in conjunction with Highways England, the revised proposal is now considered to be the optimal solution to improve the junction within the likely available funding and given the design and construction constraints at this location.

7 STRATEGIC RESOURCE IMPLICATIONS

- 7.1 Council approved £0.36m of capital funding to develop the business case. Cabinet approved the Birchley Island scheme in July 2016 (minute 116/16). The main funding package for the was approved by Cabinet on 13th June 2018 (minute 86/18) comprising £16m Local Growth Fund (LGF), £7.43m Transforming Cities Fund (TCF) and £2.82m from Council capital.
- 7.2 Business cases have previously been submitted to the WMCA and BCLEP. A business case was submitted to the DfT through Midlands Connect for Major Route Network (MRN) funding in July 2019 with S151 officer sign off by the Executive Director of Resources. The Interim Director of Regeneration and Growth and the S151 Officer approved the submission of a revised MRN Outline Business case to the DfT in November 2020 with the updated scheme and costs following agreement with Highways England.
- 7.3 The Black Country Executive Joint Committee has approved several changes to the LEP funding allocations at meetings throughout 2019 and 2020. The overall funding package approved in 2018 falls short of the current scheme cost and is subject to satisfying the assurance frameworks of the BCLEP and WMCA.
- 7.4 Birchley Island Programme Board (including representatives for the BC LEP, WMCA, Highways England, Black Country Director of Transport, Executive Director Neighbourhoods, Director of Regeneration and Growth, Highway Service Manager, Strategic Planning and Transportation Manager and Project Manager) have explored an alternative funding route through Midlands Connect with the Department for Transport. It has been established that unconstrained MRN funding is available and the Council was invited to submit an Outline Business Case (OBC) in 2019 to secure programme entry for this funding. This OBC has been updated following agreement with Highways England for re-submission.

7.5 MRN funding requires a local contribution of at least 15%. This requirement is met through a combination of the SMBC contributions and regional funding. The Government is yet to confirm when an announcement will be made regarding successful MRN bids but is anticipated that this will take place in the New Year.

7.6 During 2019 the design has been modified to accommodate updated traffic counts, updated regional traffic modelling and Highways England requirements to reduce the potential impact on the adjacent M5 Junction 2. The revised scheme cost is £30.170m and also takes into account ONS inflation forecasts (updated to include the effects of COVID 19, BREXIT and Sterling forecasts).

7.7 The current funding package (£m) is as follows.

Funding Source	Current funding Without MRN Funding	Funding Profile with MRN Funding
SMBC Development Funding	0.360	0.360
SMBC Local Contribution	2.820	2.820
LGF Development Funding 1	0.150	0.150
LGF Development Funding 2	1.400	1.400
LGF Main Scheme Funding	0.800	0
LEP (Enterprise Zone)	13.800	0
TCF	7.430	1.000
MRN	0	24.440
Unfunded	3.410	0
TOTAL	30.170	30.170

7.8 The LGF Dev 1 grant funding has been spent, audited against the terms and conditions and has reach financial completion. The LGF Main Scheme Funding is yet to be formally accepted and authority to do this is included in this report's recommendations.

7.9 The Sandwell Capital contributions of £3.18m (£0.36m + £2.82m) are almost sufficient to underwrite the remaining local LGF and TCF grant funding of £3.2m (£1.40m + £0.80m + £1.00m). In the unlikely event that all of the local grants were clawed back the difference of £0.02m could be met from Local Transport Block allocations for advance work on Major Schemes.

8 LEGAL AND GOVERNANCE CONSIDERATIONS

- 8.1 The Compulsory Purchase Order will be made using powers contained in the Highways Act 1980, specifically sections 239, 240 and 250.
- 8.2 The Side Roads Order will be made using powers contained in the Highways Act 1980, specifically sections 14 and 125.
- 8.3 The rights of property owners within the Human Rights Act 1998 particularly Article 8, Article 14 and Article 1 of the First Protocol have been considered. The compulsory acquisition of land would not constitute an unlawful interference with any of these.
- 8.4 In certain circumstances if land is blighted by the proposed scheme the owners of the land in question may serve a Blight Notice on the Authority which, if valid, could force its acquisition of the land prior to a Compulsory Purchase Order being confirmed by the Secretary of State. The definition of blighted land is contained within schedule 13 Town and Country Planning Act 1990. The likelihood of any valid Blight Notices being received is considered very low. It should be noted that the Council currently has no financial provision for such acquisitions generally. In the event that valid Blight Notices are received, acquisition would be funded from either SMBC capital resources allocated to the scheme or from funds allocated by the BCLEP.
- 8.5 Highways England is the Highway Authority for the roundabout at M5 Junction 2 and for the link road between the roundabout and Birchley Island. The preferred scheme requires works to both and the acquisition of land adjacent to the link road. Under section 6 (1) of the Highways Act 1980, the Secretary of State with responsibility for transport may by agreement with a metropolitan district council delegate its powers to the district council for the purposes of the maintenance or improvement of its highways. Cabinet gave authority to enter into such an agreement with Highways England on 27th June 2016.

9 EQUALITY IMPACT ASSESSMENT

- 9.1 An initial screening for equality impact indicates that the proposals do not raise any issues that would require a full Equality Impact Assessment. However, as the scheme's detailed design progresses the need, or otherwise, for an EIA will be reviewed as part of the scheme's approvals process.

10 DATA PROTECTION IMPACT ASSESSMENT

10.1 The requirements of the General Data Protection Regulations will be observed in the management of any data collected during the preparation of the CPO and SRO and, once made, resulting from the statutory objection periods relating to them.

11 CRIME AND DISORDER AND RISK ASSESSMENT

11.1 There are no crime and disorder implications arising from the recommendations of this report.

11.2 The Corporate Risk Management Strategy (CRMS) has been complied with to identify and assess the significant risks associated with this decision. This includes (but is not limited to) political, legislation, financial, environmental and reputation risks. Based on the information provided, it is the officers' opinion that for the significant risks that have been identified, arrangements are in place to manage and mitigate these effectively.

11.3 The indicated funding arrangements would accommodate mid-range estimates of cost and programme risk. The mid-range estimates take into account the Office for National Statistics inflation forecasts predicting the medium term economic impact of COVID 19, BREXIT and sterling. There is considerable uncertainty about the economic outlook and significant changes to inflation forecasts or programme delays could change the cost of the scheme.

11.4 The most significant programme and cost risk is anticipated to be the diversion of approximately £5m of utility cables, mains and apparatus, particularly a number of large electricity cables. Utility diversion work is implemented under the terms and conditions of utility companies and can be subject to programme delay or additional cost. Appropriate risk allowances have been included based on information currently available.

12 SUSTAINABILITY OF PROPOSALS

12.1 The specification of the scheme is sufficient to ensure that future revenue requirements for the maintenance of these improvements can be managed within existing resources allocated for highway maintenance purpose.

12.2 There are no identifiable revenue costs resulting from the proposed project. There will be small reductions in energy costs arising from the use of LEDs. Planned interventions in maintenance, upgrading and renewal will lead to reduced revenue liabilities for the Council over the coming years. However, the increased infrastructure will slightly add to future maintenance liability.

13 HEALTH AND WELLBEING IMPLICATIONS (INCLUDING SOCIAL VALUE)

13.1 The proposed improvements at Birchley Island/M5 junction 2 will contribute to a safe and efficient transport system. This in turn will assist in improving access to facilities and services, and to jobs, improving the environment and contributing to the economic wellbeing of the borough through improved links to national and international markets.

14 IMPACT ON ANY COUNCIL MANAGED PROPERTY OR LAND

14.1 The proposed scheme involves works to improve the existing public highway. The scheme will increase the highway infrastructure to be maintained including the overall area of carriageway. However, the proposals will also secure the timely repair and renewal of highway assets (carriageway/footway surfaces, drop crossings, drainage covers, kerbing, street-lighting, street signs and traffic signals), in a planned, focused and comprehensive manner, to prolong the life of these elements and mitigate the risk of early reconstruction arising from the significantly increased traffic volumes.

15 CONCLUSIONS AND SUMMARY OF REASONS FOR THE RECOMMENDATIONS

15.1 The revisions to the scheme have resulted from the detailed technical appraisal carried out over the last 12 months involving the Council and Highways England (HE). The scheme as now proposed meets all the aims and objectives of the project whilst addressing HE's requirements relating to the safe and efficient operation of the M5. The revised scheme continues to achieve a benefit to cost ratio that falls into the "Very High" value for money category as defined by the Department for Transport. Its approval is therefore recommended.

- 15.2 The project cannot be implemented without the acquisition of land not currently in public ownership. Whilst every effort will be made to acquire the necessary land through negotiation with owners and other interested parties, the possibility remains that a Compulsory Purchase Order (CPO) will be needed to secure all of the land required. Cabinet gave authority to make a CPO in June 2018, however the revised scheme results in a different land take. Therefore, a further authority is sought to make a modified CPO and to acquire and take possession of the Order lands using appropriate powers.
- 15.3 In addition to the CPO, a Side Roads Order (SRO) is required to obtain the necessary powers to construct the scheme and to close or divert side roads and private means of access. As with the CPO, authority to make an SRO was granted by Cabinet in June 2018. Different modifications to existing side roads and access points result from the revised scheme. Therefore, authority is sought to make the modified SRO under appropriate powers.
- 15.4 The Council needs to formally accept the LGF Main Scheme grant funding from the Black Country LEP, so authority is required to enable the Director - Regeneration of Growth to accept this in consultation with the Cabinet Member for Inclusive Economic Growth and the Acting S.151 Officer.

16 BACKGROUND PAPERS

- 16.1 Strategic Resources DMS - 13th June 2013
- 16.2 Report to Cabinet - 29th October 2014
- 16.3 Report to Cabinet 18th February 2015
- 16.4 A4123 Birchley Island/M5 Junction 2 Improvement – Major Scheme Business Case (2015)
- 16.5 Report to Cabinet – 27th July 2016
- 16.6 Black Country Core Strategy (2011)
- 16.7 Sandwell Site Allocations & Delivery DPD (2012)
- 16.8 West Midlands Strategic Transport Plan – Movement for Growth (TfWM 2016)
- 16.9 Movement for Growth – Ten Year Delivery Plan (TfWM 2017)
- 16.10 Black Country Strategic Economic Plan (BCLEP 2014)
- 16.11 Report to Cabinet 18th June 2018

17 **APPENDICES:**

- A. General Arrangement Drawing (Drawing No. P60479226/SK/220 Rev 4)
- B. Draft Compulsory Purchase Order Map
(Drawing No. P 60479226/CPO/01/01)
- C. Draft Side Roads Order Plan (Drawing No. P 60479226/SRO/01/01)
- D. Summary of comments received as a result of the Virtual Public Exhibition

Tammy Stokes
Interim Director – Regeneration & Growth

Rebecca Maher
Head of Finance