

BIRMINGHAM CITY COUNCIL

PUBLIC REPORT

Report to:	CABINET	
Report of:	STRATEGIC DIRECTOR FOR ECONOMY	
Date of Decision:	26th July 2016	
SUBJECT:	BATTERY WAY EXTENSION LOCAL GROWTH FUND IMPROVEMENTS FULL BUSINESS CASE	
Key Decision: Yes	Relevant Forward Plan Ref: 000316/2016	
If not in the Forward Plan: (please "X" box)	Chief Executive approved	<input type="checkbox"/>
	O&S Chairman approved	<input type="checkbox"/>
Relevant Cabinet Member(s)	Councillor Stewart Stacey – Transport and Roads Councillor Majid Mahmood – Value for Money and Efficiency	
Relevant O&S Chairman:	Councillor Zafar Iqbal – Economy, Skills and Transport Councillor Mohammed Aikhlaq – Corporate Resources and Governance	
Wards affected:	Acocks Green, South Yardley & Springfield	

1. Purpose of report:
1.1 To seek approval to accept funding from the Greater Birmingham and Solihull Local Enterprise Partnership (GBSLEP), approve the Full Business Case (FBC) for the delivery of the Battery Way Extension Local Growth Fund (LGF) Improvements scheme at an estimated capital cost of £4.024m (including fees) and authorise all necessary land agreements. The scheme will unlock access to development sites to benefit the local economy while improving local road safety for all road users.
1.2 To seek approval for the Assistant Director, Transport & Connectivity to award contracts and place orders for all of the works, subject to the works cost being within the pre tender estimate.
1.3 The accompanying private report contains confidential market information which could impact on the tender process.

2. Decision(s) recommended:
That Cabinet:-
2.1 In its capacity as the Council and as Accountable Body for the Greater Birmingham and Solihull Local Enterprise Partnership, approves the Full Business Case for Battery Way Extension Local Growth Fund Improvements, as provided in Appendix A to this report, at an estimated total capital cost of £4.024m including fees.
2.2 Accepts £3.710m of grant funding from the Greater Birmingham and Solihull Local Enterprise Partnership Local Growth Fund.
2.3 Approves the making of a Compulsory Purchase Order under Sections 239, 240, 246 and 250 of the Highways Act 1980 in respect of the land and rights within the areas shown edged black on drawing CA-02711_S1_024 (Appendix F to this report).
2.4 Authorises the City Solicitor to carry out all preparatory work for the Compulsory Purchase Order (including land referencing), prepare and seal the necessary documentation and to submit the order to the Secretary of State for Transport for confirmation, preparation for Public Inquiry (if required) and to serve all necessary notices to give effect to the Compulsory Purchase Order and its implementation, including High Court Enforcement

Officer Notices and (if granted power to do so) to confirm the Compulsory Purchase Order.

- 2.5 Authorises the Director of Property to negotiate and complete the acquisition (and disposal if required) to facilitate the building of the new highway of any interest including easements and drainage in the adjoining land connected to the scheme, in advance of and alongside the confirmation of the Compulsory Purchase Order and to agree costs and compensation relating to the Compulsory Purchase Orders, and authorise the City Solicitor to complete such acquisitions or disposals or easements and seal any documents in connection therewith.
- 2.6 Approves the demolition of 152 Reddings Lane to resolve all matters and carry out all necessary work in pursuance of the Party Wall etc. Act 1996, relating to the neighbouring City Council owned property at 150 Reddings Lane.
- 2.7 Authorises the advertisement of appropriation of open space land, as shown on the plan at Appendix G to this report, in accordance with Section 122 (2A) of the Local Government Act 1972, and consideration by the Cabinet Member for Transport and Roads of any objections to the appropriation. Subject to:
- (i) the Cabinet Member for Transport and Roads being satisfied after consideration of any such objections that appropriation of the open space land should proceed, or
 - (ii) if no objections are received - approves the appropriation of the open space land from Economic Development to Transportation use.
- 2.8 Authorises the advertisement of disposal of open space land, as shown on the plan at Appendix H to the public report, in accordance with Section 123 (2A) of the Local Government Act 1972, and consideration by the Cabinet Member for Transport and Roads of any objections to the appropriation. Subject to:
- (i) the Cabinet Member for Transport and Roads being satisfied after consideration of any such objections that disposal of the open space land should proceed, or
 - (ii) if no objections are received - approves the disposal of the open space land.
- 2.9 Authorises the making of an application to the Secretary of State for an order for the stopping up etc. of highway in accordance with S248 of the Town and Country Planning Act 1990 to support the Compulsory Purchase Order (or such similar Orders as may be required).
- 2.10 Authorises the Director of Property to enter into Agreements with land owners / occupiers along the route, which include exchanges of land, easements and ancillary matters, and to serve notices to secure possession.
- 2.11 Authorises the City Solicitor to negotiate, execute and complete all necessary agreements and documentation to give effect to the above recommendations.

Lead Contact Officer(s):

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3. Consultation:

3.1 Internal

- 3.1.1 The Acocks Green, South Yardley and Springfield Ward Councillors, the District Committee Chairs for (Hall Green and Yardley Districts) and the MPs for Hall Green and Yardley have been consulted and their responses are given in Appendix D. The Assistant Director of Highways and Infrastructure has also been consulted and comments are also given in Appendix D.
- 3.1.2 The Leader has been consulted in respect of the land and property responsibilities and supports the proposals to proceed to executive decision
- 3.1.3 Officers from Legal and Democratic Services, City Finance and Corporate Procurement Services have been involved in the preparation of this report.

3.2 External

- 3.2.1 A public consultation exercise for the Battery Way Extension improvements was carried out in February 2015, with further local consultation on parking restrictions carried out in June 2016, and the results are given in Appendix D. Centro, bus operators, cycling groups and other key stakeholders have also been consulted as part of the scheme development, and the results are given in Appendix D.

4. Compliance Issues:

4.1 Are the recommended decisions consistent with the Council's policies, plans and strategies?

- 4.1.1 The Battery Way Extension scheme fully supports the primary objectives as set out in the City Councils Business Plan and Budget 2016+. The proposal contributes to "strong economy" through investment in transport infrastructure that supports new developments being built in Birmingham. It also aligns with the GBSLEP Strategy for Growth, Strategic Economic Plan.

4.1.2 Birmingham Business Charter for Social Responsibility (BBC4SR)

Compliance with the BBC4SR is a mandatory requirement that will form part of the conditions of this contract. The framework providers that will be invited to tender are all certified signatories to the charter. Tenderers will submit additional actions which support the local economy and create much needed jobs and apprenticeships with their tender proportionate to the value of this contract that will be added to their action plan. The action plan of the successful tenderer will be implemented and monitored during the contract period.

4.2 Financial Implications

- 4.2.1 The estimated cost of the proposals covered by this FBC is £4.024m (including, works, contingency, statutory undertakers, CPO costs and fees). The project is funded by £0.157m Integrated Transport Block (ITB), £0.157m S106 (Battery Way 2013/04953/PA) funding and £3.710m Local Growth Fund (LGF).
- 4.2.2 This project will create assets that will form part of the highway upon completion of the project; as such they will need to be maintained within the overall highway maintenance regime. The estimated cost of including these newly created assets within the highway maintenance regime is £0.049m per annum. This additional cost will be funded from the provision for Highways Maintenance held within Corporate Policy contingency.

4.2.3 A risk management assessment has been undertaken and is included in Appendix C.

4.3 Legal Implications

4.3.1 The City Council carries out transportation, highways and infrastructure related works under the relevant primary legislation including the Town and Country Planning Act 1990, Highways Act 1980, Local Government Act 1972, Road Traffic Regulation Act 1984, Traffic Management Act 2004, Transport Act 2000, Local Government (Miscellaneous Provisions) Act 1976, Countryside and Rights of Way Act 2000, and other related regulations, instructions, directives and general guidance.

4.3.2 The Council has powers under sections 122 and 123 of the Local Government Act 1972 to appropriate or dispose of land. Section 122(2A) and 123(2A) requires that where land is existing open space, notice of the intention to appropriate or dispose must be advertised and any objections considered prior to the appropriation or disposal taking place.

4.4 Public Sector Equality Duty (see separate guidance note)

4.4.1 In January 2015 an Equality Analysis was undertaken for the Battery Way Extension scheme and is attached as Appendix B to this report. It was concluded that there would be no adverse effect on protected groups so no action plans are required. This will be monitored and updated accordingly throughout the life of the scheme.

4.2.3 A risk management assessment has been undertaken and is included in Appendix C.

5. Relevant background/chronology of key events:

5.1 On 7th July 2014, the Government announced 39 Growth Deals to Local Enterprise Partnerships (LEP). One of the City Council promoted transportation projects included within the specific GBSLEP Growth Deal was the Battery Way Extension scheme.

5.2 The Battery Way Extension scheme proposal comprises the construction of a new road linking Warwick Road to Reddings Lane utilising land that previously formed the Yuasa Battery Site. A new traffic signal controlled junction will also be created between the new road, Reddings Lane and Olton Boulevard West. The new road will facilitate the development of the adjacent land, which is owned by a private developer, and has the potential to create approximately 345,000 sq ft of commercial floor space and 700 new jobs. The scheme will also incorporate pedestrian and cycling crossings. These measures also support increased safety for local residents by diverting through traffic along the new road away from residential areas. The proposals are shown on drawing no. CA-02711_020 attached in Appendix E. Planning permission for the new road was granted on 25th June 2015.

5.3 On 16th March 2015, Cabinet approved the Project Definition Document (PDD) for the Local Growth Fund Transport and Connectivity Projects, giving approval to commence development of the Battery Way Extension scheme. The estimated cost at PDD stage was £2.570m. In August 2015, a Business Case for Battery Way Extension was presented to the GBSLEP, estimating the total scheme cost at £2.774m. The minor increase was due to increased design and legal fees.

5.4 During the project development stage, and following expert geotechnical input, project risks were reviewed. It was considered prudent to seek additional funding to cover the earthworks costs, with a contingency provision for unforeseen works through this brownfield site. An additional £1.25m LGF was sought from GBSLEP in May 2016. This was approved on 27th May 2016 by the Greater Birmingham and Solihull Growth Team

and the total project cost is now estimated at £4.024m.

- 5.5 The Battery Way Extension project requires third party land outside of the Council's current ownership. It is proposed that a Compulsory Purchase Order (CPO) is made for the reasons set out in Appendix A and Appendix I to this report, and to run in parallel to negotiated acquisition. This authority was previously given in the overarching Project Definition Document (PDD) approval but, following further development work, additional areas of private land are required for this scheme and fresh approval for CPO is sought in this report.
- 5.6 The PDD included the requirement to terminate the tenancy of a café at 152 Reddings Lane. The lease was terminated on 6th May 2016. This property will be demolished as part of this scheme as it falls within the outer limits of the new road alignment. As part of the demolition, the outer wall of property 150 will be made good under a party wall agreement. Acivico will be used to oversee the demolition and party wall works with Contractors procured under Chief Officer delegation.
- 5.7 Following advertisement, an area (totalling 1658 m²) of Public Open Space, as shown on the plan at Appendix G to this report, is to be appropriated from Economic Development to Transportation to permit the construction of the scheme.
- 5.8 An area (totalling 410m²) of Public Open Space, as shown on the plan at Appendix H to this report, is to be disposed of to permit land swap with the developer. This land swap is required to improve the alignment of the proposed junction improvement at Reddings Lane / Olton Boulevard West, protect six dwellings and a business from being subject to Compulsory Purchase Order and subsequent demolition, and to reduce the overall loss of Public Open Space.
- 5.9 In order to construct the new road and allow adjoining land to be satisfactorily developed or permit adjacent businesses to continue to operate effectively, agreements with adjoining owners are proposed to exchange land and enter into easements. It is proposed that these transactions are delegated to the Director of Property. Any costs associated with these transactions will be contained within the approved FBC value.
- 5.10 In 2014 the City Council commenced negotiations with affected land owners. Negotiations are progressing and it is hoped the land can be acquired voluntarily. If not however, it is proposed to make a CPO to give the statutory powers to secure the private land interests. The CPO process will run in parallel to the negotiated land acquisition process. The matters referred to in Appendix I have been considered in the context of the use of CPO powers proposed.
- 5.11 As part of the proposals, 35 trees are required to be removed. 46 new trees will be planted. The following table shows a breakdown of the trees.

TREES TO BE REMOVED		
Description	No.	Notes
Mature Highway Trees	3	Avenue trees at Olton Boulevard West
Other Mature/Semi-mature or Ornamental Trees	12	Off highway – at Eaton frontage, industrial boundaries/borders and boundary of public open space land.
Juvenile or shrub trees	20	Off highway – at industrial boundaries/borders and hedge line of public open space.
NEW TREES TO BE PLANTED		
Description	No.	Notes
Highway Avenue Trees	46	Avenue trees to be planted in landscaping zones for the new highway.

- 5.12 The highway works will be procured following a competition exercise using the City Council's Highways and Infrastructure Works Framework as a build only contract. Design will be managed in house with specialist design elements procured using the West Midlands Transportation Professional Services Framework via the Council's e-tender portal. The procurement process will follow the protocols of the framework agreement. Approval has already been secured to exchange land with the developer to enable the highway works and is detailed further in Appendix A to this report.
- 5.13 Approval is now sought to the FBC for the Battery Way Extension, and authority is sought to place orders with contractors and statutory undertakers to deliver these works. Works tenders are to be invited Summer 2016, with a construction start Spring 2017 and completion in Spring 2018. The scheme will be delivered in accordance with Birmingham City Council Traffic Management Protocol to keep disruption during construction to a minimum.

6. Evaluation of alternative option(s):

- 6.1 A different alignment of the Battery Way Extension was investigated to avoid Weston Works yard. This design was rejected because of the greater impact on the development site to the south of the new road.
- 6.2 An option was considered at the junction at Reddings Lane and Olton Boulevard West to be a straight crossroads rather than the proposed staggered crossroads option. This option was disregarded as it could give the impression of the creation of a through route, rather than the industrial access road proposed. It would also have required land from the adjacent school.

7. Reasons for Decision(s):

- 7.1 Approval of this FBC for Battery Way Extension will allow the proposed project to progress to delivery stage and authorise all necessary legal procedures.

Signatures	Date
Councillor Stewart Stacey Cabinet Member for Transport and Roads
Councillor Majid Mahmood Cabinet Member for Value for Money and Efficiency
Waheed Nazir Strategic Director, Economy

List of Background Documents used to compile this Report:
1. Local Growth Fund Transport and Connectivity Projects: Programme Definition Document – Report of the Deputy Chief Executive to Cabinet on 16 th March 2015. 2. GBSLEP Full Business Case Battery Way Extension – September 2015

List of Appendices accompanying this Report (if any):
1. Appendix A – Full Business Case for Battery Way Extension 2. Appendix B - Battery Way Extension Equality Assessment Ref: EA00509 3. Appendix C – Risk Management Assessment 4. Appendix D – Battery Way Extension Consultation Summary 5. Appendix E – Battery Way Extension Scheme Plan Drawing No. CA-02711_S1_020 6. Appendix F – CPO Plan Drawing No. CA-02711_S1_024 7. Appendix G – Public Open Space Land to be Appropriated Drawing No. CA-02711_S1_031 8. Appendix H -- Public Open Space Land to be Disposed of Drawing No. CA-02711_S1_032 9. Appendix I – CPO Justification and Human Rights Consideration

PROTOCOL PUBLIC SECTOR EQUALITY DUTY

- 1 The public sector equality duty drives the need for equality assessments (Initial and Full). An initial assessment should, be prepared from the outset based upon available knowledge and information.
- 2 If there is no adverse impact then that fact should be stated within the Report at section 4.4 and the initial assessment document appended to the Report duly signed and dated. A summary of the statutory duty is annexed to this Protocol and should be referred to in the standard section (4.4) of executive reports for decision and then attached in an appendix; the term 'adverse impact' refers to any decision-making by the Council which can be judged as likely to be contrary in whole or in part to the equality duty.
- 3 A full assessment should be prepared where necessary and consultation should then take place.
- 4 Consultation should address any possible adverse impact upon service users, providers and those within the scope of the report; questions need to assist to identify adverse impact which might be contrary to the equality duty and engage all such persons in a dialogue which might identify ways in which any adverse impact might be avoided or, if avoidance is not possible, reduced.
- 5 Responses to the consultation should be analysed in order to identify:
 - (a) whether there is adverse impact upon persons within the protected categories
 - (b) what is the nature of this adverse impact
 - (c) whether the adverse impact can be avoided and at what cost – and if not –
 - (d) what mitigating actions can be taken and at what cost
- 6 The impact assessment carried out at the outset will need to be amended to have due regard to the matters in (4) above.
- 7 Where there is adverse impact the final Report should contain:
 - a summary of the adverse impact and any possible mitigating actions (in section 4.4 or an appendix if necessary)
 - the full equality impact assessment (as an appendix)
 - the equality duty – see page 9 (as an appendix).

Equality Act 2010

The Executive must have due regard to the public sector equality duty when considering Council reports for decision.

The public sector equality duty is as follows:

1	<p>The Council must, in the exercise of its functions, have due regard to the need to:</p> <ul style="list-style-type: none">(a) eliminate discrimination, harassment, victimisation and any other conduct that is prohibited by the Equality Act;(b) advance equality of opportunity between persons who share a relevant protected characteristic and persons who do not share it;(c) foster good relations between persons who share a relevant protected characteristic and persons who do not share it.
2	<p>Having due regard to the need to advance equality of opportunity between persons who share a relevant protected characteristic and persons who do not share it involves having due regard, in particular, to the need to:</p> <ul style="list-style-type: none">(a) remove or minimise disadvantages suffered by persons who share a relevant protected characteristic that are connected to that characteristic;(b) take steps to meet the needs of persons who share a relevant protected characteristic that are different from the needs of persons who do not share it;(c) encourage persons who share a relevant protected characteristic to participate in public life or in any other activity in which participation by such persons is disproportionately low.
3	<p>The steps involved in meeting the needs of disabled persons that are different from the needs of persons who are not disabled include, in particular, steps to take account of disabled persons' disabilities.</p>
4	<p>Having due regard to the need to foster good relations between persons who share a relevant protected characteristic and persons who do not share it involves having due regard, in particular, to the need to:</p> <ul style="list-style-type: none">(a) tackle prejudice, and(b) promote understanding.
5	<p>The relevant protected characteristics are:</p> <ul style="list-style-type: none">(a) age(b) disability(c) gender reassignment(d) pregnancy and maternity(e) race(f) religion or belief(g) sex(h) sexual orientation