
**HURWORTH TO NEASHAM FOOTWAY/CYCLEWAY
– COMPULSORY PURCHASE ORDER**

**Responsible Cabinet Member(s) – Councillor Nick Wallis, Highways and
Transport Portfolio, Councillor Don Bristow, Resource Management Portfolio**

Responsible Director(s) - John Buxton, Director of Development and Environment

Purpose of Report

1. To approve the making of a compulsory purchase order to secure the acquisition of land required for the Hurworth to Neasham footway which is proposed to be a shared use footway/cycleway.

Information and Analysis

Background

2. As reported to the July Cabinet meeting the need for a footpath/cycleway link between the villages of Hurworth and Neasham was identified. Cabinet approved the construction of the footpath/cycleway (technically a footway/cycleway) and authorised the Director of Development and Environment to negotiate with the land owner, Mr J Metcalfe, for the acquisition of the 3,150 m2 of agricultural land required, which is intended to be a highway maintainable at public expense. (Min C37/July/2004 refers).
3. The proposed scheme will provide a link between the existing footways at Newbus Cottage and Neasham Road in the vicinity of Old Penny Cottage. It will comprise a 1.8m wide grassed verge next to the carriageway plus a 2.5m wide hard paved surface with a grassed margin between the footway and the field boundary. It is proposed that the paved surface be designated as a footway/cycleway for use by the pedestrians and cyclists who use this length of road.

Negotiations

4. Following an initial meeting with the landowner it has proved impossible to make further contact, despite numerous calls and visits to the property, and it is believed that the owner does not wish to sell the land by agreement.

Compulsory Purchase Order

5. In order to secure the availability of the land to construct the proposed footway/cycleway it will be necessary to use the Council's formal compulsory purchase powers and accordingly it is proposed to acquire the freehold interest in the land needed for the footway (shown

shaded on the **attached plan**) under a Compulsory Purchase Order: the 'Hurworth to Neasham Footway/Cycleway Compulsory Purchase Order 2004'. This Order would be made under sections 24 and 239 of the Highways Act 1980 and the Acquisition of Land Act 1981.

Financial Implications

6. It is considered that whilst there will be some costs associated with making the Compulsory Purchase Order and presenting a case at any Public Enquiry that may be called, these are likely to be minor costs that can be subsumed within the overall scheme costs approved in July. Similarly, if the landowner successfully objects to the Compulsory Purchase Order he will be entitled to have his reasonable costs paid. The landowner will be entitled to compensation if his land is compulsorily purchased, however, it is not considered that this will be significantly different to acquisition costs included in the overall scheme costs approved in July.

Outcome of Consultations

7. The consultation process has raised no objections in principle to the proposal. The Parish Council has been consulted and supports this scheme.

Legal Implications

8. This report has been considered by the Borough Solicitor for legal implications in accordance with the Council's approved procedures. There are no issues which the Borough Solicitor considers need to be brought to the specific attention of Members, other than those highlighted in the report.

Human Rights

9. In pursuing a compulsory purchase order process, Members must be aware of the Human Rights Act 1998 (which enacts the European Convention on Human Rights in national law). None of the property required for the proposal comprises a home, but as land is proposed to be appropriated from private persons Article 1 of the First Protocol to the Convention applies. This article states that: "*every natural or legal person is entitled to the peaceful enjoyment of his possessions. No one shall be deprived of his possessions except in the public interest and subject to the conditions provided for by law and by the general principles of international law*".
10. In deciding whether the proposed action is in the public interest the Borough Council should try to strike a fair balance between individual and community interests. In striking such a balance the Committee must pay particular attention to the question of proportionality of the means employed, i.e. whether the appropriation of an individual's property is proportional to the public interest objective in building the road. In this case officers' advice is that it is.
11. It is also relevant in this context for Members to consider that the weight of the burden to be borne by the individual land owners is considerably mitigated due to the fact that the affected individuals can claim compensation and that there is an established system of appeal.

12. The second requirement for the order is that they are made in accordance with law. This will be the case here. The orders are authorised by the Highways Act 1980 and the procedures for the Compulsory Purchase Order which will be followed are laid down by the Acquisition of Land Act 1981.

Section 17 of the Crime and Disorder Act 1998

13. The contents of this report have been considered in the context of the requirements placed on the Council by Section 17 of the Crime and Disorder Act 1998, namely, the duty on the Council to exercise its functions with due regard to the likely effect of the exercise of those functions on, and the need to do all that it reasonably can to prevent, crime and disorder in its area. It is not considered that the contents of this report have any such effect.

Council Policy Framework

14. The issues contained within this report do not represent change to Council policy or the Council's policy framework

Decision Deadline

15. For the purpose of the 'call-in' procedure this does represent an urgent matter: a decision is required as soon as possible to enable funding to be spent this year.

Recommendation

16. It is recommended that members :-
- (a) Approve the making of the proposed Hurworth to Neasham Footway/Cycleway Compulsory Purchase Order 2004 as shown on the plan; and
 - (b) Authorise the Director of Development and Environment to make any incidental or minor amendments to the order following negotiations with any affected party.

Reasons

17. The recommendations are supported by the following reasons :-
- (a) to secure the acquisition of all land required for the proposed footway/cycleway; and
 - (b) to secure the construction of the new footway/cycleway for which funding is already available.

John Buxton
Director of Development and Environment

Background Papers

Correspondence with landowner.

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