



Agenda Item 16

**Transport Projects – Acquisition Of
Land for the Denny Eastern Access
Road (DEAR)**

Falkirk Council

Title: Transport Projects – Acquisition Of Land for the Denny Eastern Access Road (DEAR)

Meeting: Executive

Date: 10 December 2019

Submitted By: Director of Development Services

1. Purpose of Report

1.1 This report gives an update on the progress of the Denny Eastern Access Road (DEAR). It seeks authority to proceed with a Compulsory Purchase Order (CPO) to enable delivery of this important transport project should it not prove possible to acquire the land by negotiation or gain access to the land under licence.

2. Recommendations

2.1 It is recommended that the Executive:-

- (i) notes the progress of the Denny Eastern Access Road (DEAR) project.
- (ii) agree to the promotion of a Compulsory Purchase Order under the Roads (Scotland) Act 1984 over the private interests in the land outlined in the report and shown on the plan annexed to allow for the construction of the remaining section of the DEAR and associated roads infrastructure, and
- (iii) (if necessary to complete the transaction), agrees to the subsequent referral of the CPO to Scottish Ministers for confirmation.

3. Background and Planning History

Denny Eastern Access Road (DEAR)

- 3.1 The DEAR scheme has been identified as an important transport infrastructure development in the current adopted Local Development Plan (LDP). The scheme is required to enable and help mitigate the impact of the development sites identified in the Plan and the DEAR Supplementary Planning Guidance (June 2013).
- 3.2 The DEAR scheme will also create a bypass to Denny Cross for traffic travelling between Glasgow Road and Broad Street in Denny. The completion of the scheme will ease the current congestion on local roads and Denny Cross in particular. The planning history is summarised below:

3.3 Falkirk Council Local Plan – Adopted December 2010

The need for the DEAR was first identified in the Falkirk Council Local Plan 2010 (Proposal TR.DEN01). The new bypass road was needed to address capacity problems at Denny Cross which would be exacerbated by new development sites allocated in the plan, notably at Mydub, the former Denny High School, and Broad Street, Denny. The plan noted that Phase 1 of the road from Broad Street to the new Denny High School had been completed and funded by Falkirk Council. The remainder of the road was proposed to be developer funded, and the Council was to publish supplementary planning guidance to clarify for all parties how the proposed road would be delivered. This guidance was approved in 2013.

Falkirk Local Development Plan – Adopted July 2015

The current adopted Local Development Plan (LDP1) allocated further land at Mydub and designated the previously allocated sites and the new site collectively as the Denny South East Strategic Growth Area (SGA), one of 12 growth areas across the Council area within which the majority of housing growth was to be focused, and within which masterplanning and co-ordinated infrastructure provision would be required. DEAR (Proposal INF14) was seen as essential to the delivery of the Denny South East SGA, with the project to be funded by contributions from impacting sites, notably H14 Former Denny High School, H15 Mydub 1, H16 Mydub 2, H17 Broad Street and H22 Rosebank Dunipace. Robust structure planting was also required in association with the road to form a strong new boundary to the green belt.

The provisions of LDP1 have been carried forward into the Proposed LDP2 which is current subject to Examination and is expected to be adopted in 2020.

INF14 – Denny Eastern Access Road

A new road providing an eastern bypass of Denny Town Centre and access to South-east Denny Strategic growth Area sites at Mydub Farm.

- To be funded by developer contributions from impacting sites.
- Robust structure planting required on countryside edge to form strong boundary with countryside and green belt and to form part of a wider broadleaved habitat corridor.

3.4 **Denny Eastern Access Road Supplementary Planning Guidance June 2013 (The DEAR SPG)**

Section 2 of the DEAR SPG summarises the rationale for DEAR:

The subsequent Consultative Draft Falkirk Council Local Plan, published in 2003, introduced a bypass road, called Denny Eastern Access Road (DEAR). This transport opportunity, designated TR.DEN1, was conceived to provide two functions:

- To provide access to the proposed Mydub housing site
- To relieve traffic congestion at Denny Cross which would be exacerbated by the traffic generated by the housing in the large Mydub site and other smaller sites around Denny.

The approach of the Council to delivering DEAR was established at that time and envisaged that the bulk of the road would be developer funded. This involved both the Mydub site (to which the road would provide access) and

other housing sites around the area which cumulatively would be expected to make an adverse impact on traffic congestion at Denny Cross.

In the intervening period a short stretch of the road was built by the Council at the Broad Street end to facilitate access to the new Denny High School. This cost approximately £900k. Therefore the length of road to which this SPG applies runs from the roundabout which provides access to the school southwards and then westwards to meet up with A872 Glasgow Road at its junction with Nethermains Road. A section of DEAR has been constructed as part of Mydub Phase 1 as shown in Appendix 1.

3.5 Southern Section of DEAR

The southern section of DEAR has been constructed as part of Planning Application P/12/0546/FUL - Proposal for 307 New Homes (Including 46 Affordable Homes) and Denny Eastern Access Road (DEAR), Including Provision of Greenspace, Sustainable Urban Drainage and Associated Infrastructure. Avant Homes (formerly Bett Homes) entered into a Section 75 agreement with Falkirk Council to provide funding towards DEAR of £3,383,900. The current construction of this southern section by Avant Homes is part payment in kind under the S75 Obligation. The residual balance, currently estimated at £1,633,900, is due to be paid to the Council on the completion of the 251st housing unit.

Local Transport Strategy

3.6

The project accords with and will help to implement the Acquiring Authority's Local Transport Strategy policy NWK4 – Road Network Review and Management Policies. The policy states that the Council will work with other authorities, Transport Scotland and developers to deliver network improvement schemes which contribute to the safety of the road network reduce congestion or improve accessibility, thus strengthening the economy as part of a package of measures that support sustainable transport.

4. Funding Mechanism

- 4.1 Transport Assessment and Implementation: A Guide published by the Scottish Executive Development Department (August 2005) highlights the need to consider the cumulative impact of development. This approach is continued in Scottish Planning Policy (SPP) published by the Scottish Government in 2010.
- 4.2 In the light of this advice, Falkirk Council has applied the cumulative impact approach to new development where any significant infrastructure improvements are required as a result of development. The apportioning of the relevant costs would normally be based on the level of traffic impact of each development as a percentage of the overall traffic impact from all of the proposed development sites in the area. This level of impact would normally be quantified through a Transport Assessment at the planning application stage, and the necessary mitigation/developer contribution agreed as a result of that.
- 4.3 Following this approach, the principle for seeking contributions is based on the relative degree of traffic impact. The apportioning of cost between developers reflects the extent to which traffic from each development would impact on

Denny Cross and/or use the new road.

4.4 As indicated above it is reasonable to consider sites, other than those specifically assigned in the Falkirk Council Local Plan, to make a contribution if the traffic generated were likely to make an impact on Denny Cross. Other sites which have been taken into account for consideration are those making up the SIRR proposals at Banknock on the grounds that children from these areas attend Denny High School and new pupils from the development sites would travel through Denny Cross to reach the school until DEAR is completed. The redevelopment of Denny town centre has also been included as a potential contributing project.

4.5 Falkirk Council approved its current three year capital programme (2018 – 2021), on 7 March 2018, which included expenditure on DEAR (including construction and land acquisition) through additional prudential borrowing with the anticipation that the future developer contributions will continue to be due in accordance with the Supplementary Planning Guidance.

4.6 Project Costs

An assessment of the likely costs of constructing the DEAR in its entirety has been made by the Engineering Design Unit of Development Services. Taking into account the cost of ancillary works such as topographic surveys, ecology studies, building in various contingencies and allowing for continuing access to rights of way and core paths which cross the route, the total cost of the Council's preferred option at January 2018 prices has been calculated as £7,399,710. This total also makes allowance for land acquisition costs.

4.7 While the figure of £7,399,710 represents a worst case cost, which incorporates 'optimism bias', the actual costs will vary from this figure depending on when construction takes place. This figure is very much an estimate for the purposes of the SPG, and it is prudent to build in an assumption of at least a 1.5% rise in costs annually until the actual construction time.

4.8 The section of DEAR shown as Plot 3 Avant Homes on the Plan forms part of the planning obligation for P/12/0546/FUL listed above. The overall agreed contribution as part of the planning permission is £3,383,900 and involves part construction (as payment in kind) and a residual balance payable on completion of the 251st dwelling on the site.

4.9 The current estimated cost of the southern section completed by Avant Homes is £1.75m and this combined with already received obligations would give a total of £1.88m of the overall costs already being met. The balance of funding required to complete DEAR is currently estimated at £5.52m.

4.10 Road Adoption

The full length of DEAR including the sections already constructed will be adopted by Falkirk Council and will form part of the adopted road network in the Council area.

5. **Land Assembly and Engagement with Parties**

5.1 Falkirk Council currently owns land that will deliver the northern section of the

proposed scheme. This is shown as hatched on the attached plan. As highlighted above Plot 3 is owned by Avant homes. This road is subject to a Roads Construction Consent and will be adopted as part of the Public Road network in due course. The land shown on the plan as Plots 1 and 2 (the Order Land) is the balance needed to complete the land assembly to allow the remaining section of DEAR to be constructed along with associated roads features and infrastructure. The Order Land is owned by Callendar Estates and is leased to 2 tenant farmers who occupy different parts of the Order Land at Mydub farm and Cuthelton Farm.

- 5.2 The District Valuer (DV) was instructed in April 2018 to commence negotiations with Callendar Estates and an initial meeting to discuss value was held in May 2018.
- 5.3 The Council offered to purchase the land at a nominal cost to reflect the purpose and betterment to Callendar Estates land as a result of the construction of DEAR. This recognises that the new road will release further land for residential development – the second phase of the Mydub development.
- 5.4 As part of the construction contract, accommodation works to specifically/positively assist and help minimise inconvenience to the tenant farmers were agreed with Callendar Estates. These works include the provision of new fencing, new gates, an environmental buffer zone and, a new farm access (Cuthelton Farm). Further discussions to provide a new cattle pen and a water supply to 4 new troughs were also under discussion.
- 5.5 Callendar Estates has been co-operating with these negotiations, enabling various ground investigations. However, some concern has recently been expressed regarding the extent of land required for DEAR, including the temporary ancillary areas needed to facilitate construction.
- 5.6 Callendar Estates has suggested that a temporary licence and road adoption agreement be agreed between the parties, permitting early access onto their land. The licence was prepared and issued by Falkirk Council in February 2019. The intention was that once completed and publicly adopted, Falkirk Council would acquire ownership of only the footprint of the new road and the surplus ancillary areas would revert to Callendar Estates. However, the licence agreement has not been concluded.
- 5.7 Callendar Estates sought clarification on the developer's contributions in relation to DEAR and Falkirk Council confirmed that the funding mechanism referred to above would be taken forward. Callendar Estates also queried the financial position and the impact which the construction of DEAR would have on planning contributions relating to the next phase of the Mydub Development.
- 5.8 Falkirk Council sought to progress and simplify the matter by seeking a straight purchase of the land specifically required for the construction of DEAR. The DV provided a land cost estimate in June 2019 and issued revised terms and conditions to Callendar Estates for the land acquisition.
- 5.9 Discussions with Callendar Estates continue and it is evident that they wish to take a holistic view and are keen that the roads and planning matters applicable to the development of their adjacent land ownership are clarified.

This uncertainty is impeding the early construction of DEAR and adds justification for the need to promote a CPO.

6. Justification for CPO and Public Benefits of DEAR

- 6.1 In order for CPO to be confirmed, an acquiring authority must establish whether the public benefits of acquiring the necessary land outweigh the private interests and that there is no suitable alternative way to realise its objective.
- 6.2 The principle of housing development in this area has been long established and growth has been encouraged through the local development plan process. The resultant impacts on traffic congestion, at Denny Cross and the need to provide a robust traffic network solution for proposed new housing developments in the area mean that the DEAR solution is the only viable way of addressing these issues.
- 6.3 The main benefits of DEAR are in easing congestion at Denny Cross and facilitating the strategic growth area and allowing other development sites to be brought forward. Without this, development pressure for the release of other housing land sites will increase. As a consequence of reducing congestion at Denny Cross there will also be improvements in air quality and road safety. The combination of the Denny town centre regeneration and DEAR will benefit the local economy by making Denny town centre an easier more attractive place to visit for local shops and services and to attract investment.

7. Consultation

- 7.1 As part of the Local Plan and Local Development Plan process extensive public consultation exercises were carried out in the local communities in order to produce the plan. As part of the proposals under consultation was Local Plan proposal TR.DEN01 and Local Development Plan Project INF14 for the Denny Eastern Access Road.
- 7.2 The Local Transport Strategy in 2006 and 2014 included extensive consultation with the public, industry and stakeholders regarding transport policies and projects. As result of the consultation the scheme to construct DEAR was included in the adopted strategy.
- 7.3 Planning application P/12/0546/FUL has gone through consultation before planning permission was granted.

8. Implications

Financial

- 8.1 Funding is available through the Council's Capital Programme for the CPO as well as the construction of the road improvement scheme. There may be costs of legal representation as per paragraph 8.4 below.
- 8.2 The project is initially to be funded through Prudential Borrowing with the intention being that the Council will recover the costs of the scheme (retrospectively if necessary) through the relevant planning obligations received for the sites in the Denny and surrounding area identified in the Local Development Plan.

Resources

- 8.3 Staff time will be required to conclude land acquisition and complete detailed design of the road improvement scheme.

Legal

- 8.4 There may be objections to the CPO that will lead Scottish Ministers to order a Public Local Inquiry, conducted via a hearing or written representations.

Risk

- 8.5 If the outcome of any Public Local Inquiry is unsuccessful there is a risk that the scheme would not progress and that costs may be awarded against the Council.

Equalities

- 8.6 An equality and poverty impact assessment is not required.

Sustainability/Environmental Impact

- 8.7 A full Strategic Environmental Assessment was carried out on the Local Development Plan which included the DEAR.

Policy

- 8.8 The DEAR project enables the delivery of the Council's policy priorities including the Local Development Plan and the 'Enabled Communities' workstreams of Council of the Future.

9. Conclusions

- 9.1 This report summarises the progress of the DEAR. It asserts that given the information above, there is a clear case in the public interest to make provision for the use of CPO powers to acquire the land to deliver the road improvement scheme at DEAR.

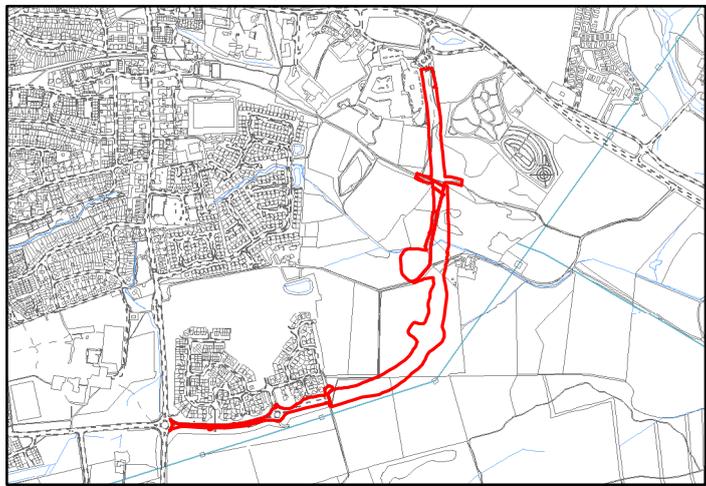
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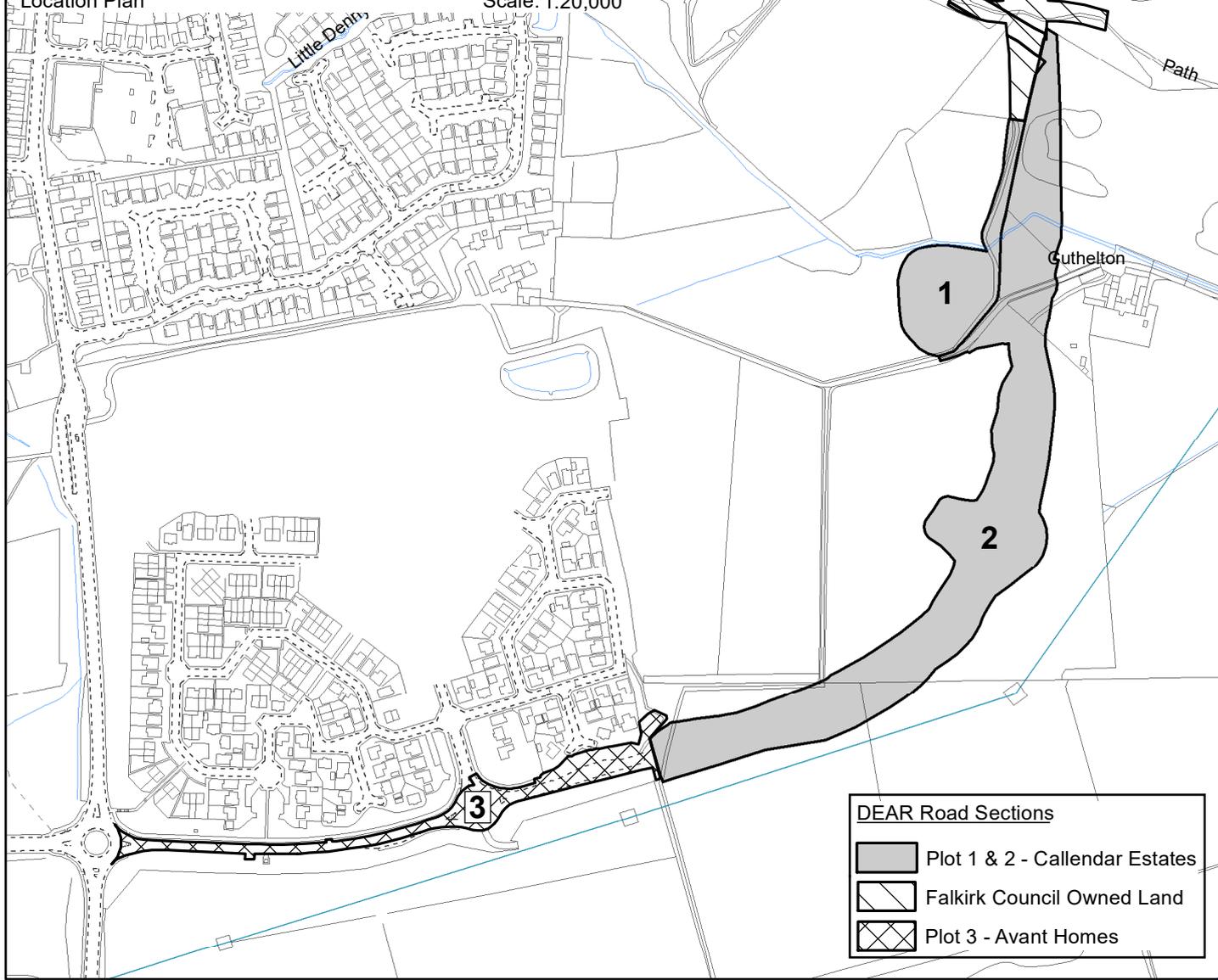
Appendices Remaining Section of the Denny Eastern Access Road (DEAR) – Plots
1 & 2 – Appendix 1

List of Background Papers - None



Location Plan

Scale: 1:20,000



DEAR Road Sections

-  Plot 1 & 2 - Callendar Estates
-  Falkirk Council Owned Land
-  Plot 3 - Avant Homes



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Scale: 1:5,000

Date: 7.11.2019



Subject **Remaining Section of the Denny Eastern Access Road (DEAR) - Plots 1 & 2 - Appendix 1**

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