

## Report of Head of Highways, Mark Readman

### Electoral division(s) affected:

Evenwood

### Purpose of the Report

- 1 To authorise the giving of notices pursuant to section 289/section 290 of the Highways Act 1980 in respect of the Land in order to enable entry onto the Land and for survey works to be undertaken

### Executive summary

- 2 The County Council of Durham in its capacity as local highways authority ("the Council") is currently working to deliver a bypass scheme at Toft Hill.
- 3 As part of the proposal, it is necessary for the Council to undertake a number of surveys including bat and bird surveys of the land in the area potentially surrounding the possible route of the bypass (the exact route will be informed following the outcome of various surveys and further work). There are only limited periods throughout the year where such surveys can be undertaken.
- 4 Negotiations have been ongoing for some time with the owners and occupiers of the land shown hatched red, black and blue on the plan attached to this report at Appendix 2 ("the Land") in order to obtain voluntary access to the Land. However, the negotiations have been unsuccessful and due to the limited window for completing the necessary surveys, access needs to be taken onto the Land urgently due to the limited period in which ecology surveys can be undertaken.
- 5 Pursuant to section 289 of the Highways Act 1980, persons duly authorised in writing have the right to enter onto land (and place and leave equipment thereon) for the purposes of surveying that land. However, before entry can be taken and any apparatus placed onto any land pursuant to section 289, notice must be given to owners and occupiers pursuant to section 290 of the Highways Act 1980.

- 6 Pursuant to Table 6 of the Council's Constitution authority is delegated to the Head of Highways to enforce all the provisions of the Highways Act 1980.

**Recommendation(s)**

- 7 To authorise the service (by Mark Jackson, Head of Transport and Contract Services) of those notices pursuant to section 289/section 290 of the Highways Act 1980 as set out in the report which are necessary in connection with the proposed Toft Hill bypass scheme in order to facilitate the undertaking of surveys of the Land (as defined within the report) including entry onto the Land.

## **Background**

- 8 The County Council of Durham in its capacity as local highways authority (“the Council”) is currently working to deliver a bypass scheme at Toft Hill.
- 9 As part of the proposal, it is necessary for the Council to undertake a number of surveys including bat and bird surveys of the land surrounding the potential route of the bypass. There are only limited periods throughout the year where such surveys can be undertaken.
- 10 Negotiations have been ongoing for some time with the owners and occupiers of the Land in order to obtain voluntary access to the Land. However, the negotiations have been unsuccessful and due to the limited window for completing the necessary surveys, access needs to be taken onto the Land urgently due to the limited period in which ecology surveys can be undertaken.
- 11 Pursuant to section 289 of the Highways Act 1980, persons duly authorised in writing have the right to enter onto land (and place and leave equipment thereon) for the purposes of surveying that land. However, before entry can be taken and any apparatus placed onto any land pursuant to section 289, notice must be given to owners and occupiers of the proposed entry and the bringing and leaving of apparatus (section 290 of the Highways Act 1980).
- 12 Pursuant to Table 6 of the Council’s Constitution authority is delegated to the Head of Highways to enforce all the provisions of the Highways Act 1980.
- 13 The purpose of this report is to seek authority to serve notice upon the owners and occupiers of the Land and thereafter enter onto the Land for the purposes of carrying out surveys of the Land.

## **Options (if appropriate)**

- 14 There are two main options available to the Council. These are; either refuse to authorise the service of the notices pursuant to section 289/section 290 of the Highways Act 1980 or authorise the service of the notices (and subsequent entry onto the Land).
- 15 It is certainly possible to refuse to authorise the service of the notice. However, this would result in the Council being unable to assess the potential impacts of the proposed Toft Hill bypass scheme. Given the scale and importance of the scheme, it is not considered that this would be an appropriate option.
- 16 Subject to assessment of the main implications below, it is considered that it would be appropriate to authorise the service of notices pursuant

to section 290 of the Highways Act 1980 in order to facilitate entry onto the Land.

## **Main implications**

- 17 As outlined above, the Council has been in negotiations with the owners/occupiers of the Land and their representatives for some time. To date, negotiations have not been successful and given the limited available window in order to undertake the necessary surveys, it is necessary to enter onto the Land as a matter of urgency. However, the entry onto the Land pursuant to section 289 of the Highways Act 1980 will be without the consent of the owners/occupiers of the Land. Whilst this is regrettable, it is considered necessary in order to progress the scheme in a timely manner to serve the notice pursuant to section 290 of the Highways Act 1980. Officers will keep the owners/occupiers informed of progress and will continue to attempt to negotiate voluntary access to the Land moving forward. Furthermore, survey times have been arranged in order to minimise disruption to the owner/occupier.
- 18 It is also acknowledged that the exercise of powers under section 289/section 290 of the Highways Act 1980 engages Article 1 of the First Protocol of the European Convention on Human Rights; namely the right to peaceful enjoyment and protection of property. It is noted, however, that rights afforded under this Article are not absolute but qualified. The Council notes that entering onto the Land will result in interference with the owner's and occupier's rights. However, this interference must be balanced against the wider public interest in pursuing the bypass scheme and establishing its potential impacts. It is lawful for a local highway authority to enter onto land if that action is clearly necessary and proportionate.
- 19 In this instance, officers have had regard to the potential benefits arising from the bypass scheme and the limited amount of time during which surveys will be undertaken on the Land. It is not anticipated that any permanent damage will be caused to the Land and intrusion onto the Land will be kept to a minimum. It is therefore considered that these factors outweigh any interference with the Human Rights of the owners and or occupiers. It is therefore considered to be necessary and proportionate to enter onto the Land.
- 20 Section 149 of the Equality Act 2010 requires public authorities when exercising their functions to have due regard to the need to i) the need to eliminate discrimination, harassment, victimisation and any other prohibited conduct, ii) advance equality of opportunity between persons who share a relevant protected characteristic and persons who do not share it and iii) foster good relations between persons who share a relevant protected characteristic and persons who do not share that

characteristic. In this instance, officers have assessed all relevant factors and do not consider that there are any equality impacts identified.

- 21 There is a right to compensation in respect of any damage or disturbance to the enjoyment of the Land.

### **Conclusion**

- 22 Having regard to the necessary nature of the surveys in order to progress the Toft Hill bypass scheme and assess its potential impacts, the limited extent and duration of the surveys and all other relevant factors, it is considered that it would be appropriate to authorise the service of notices pursuant to section 289/section 290 of the Highways act 1980 in respect of the Land in order to facilitate entry onto the Land to undertake surveys.

### **Background papers**

- None

### **Other useful documents**

- None

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### **Author(s)**

Mark Jackson

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## **Appendix 1: Implications**

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### **Legal Implications**

Section 289 and section 290 of the Highways Act 1980 gives powers to local highways authorities to enter onto land in order to carry out surveys.

### **Finance**

There may be compensation payable in respect of the entry onto the Land as set out within the report.

### **Consultation**

N/A

### **Equality and Diversity / Public Sector Equality Duty**

Equality issues are covered within the report. No factors have been identified which would suggest that it would not be appropriate to serve the notice pursuant to section 290 of the Highways Act 1980

### **Climate Change**

This decision relates to the entry onto the Land in order to undertake surveys. It is not anticipated that there will be any impacts upon climate change due to this.

### **Human Rights**

Human Rights implications are covered within the report. No factors have been identified which would suggest that it would not be proportionate to serve the notice pursuant to section 289/290 of the Highways Act 1980

### **Crime and Disorder**

N/A

### **Staffing**

N/A

### **Accommodation**

N/A

### **Risk**

There is a risk that if the surveys are not undertaken that the Toft Hill bypass scheme may not be able to progress.

## **Procurement**

N/A