

Wiltshire Council

Cabinet

17 June 2014

Subject: Junction 16 of M4 Motorway – Capacity Enhancement Works

Cabinet Member: Councillor Fleur de Rhé-Philippe – Cabinet Member for Economy, Skills and Transport

Key Decision: Yes

Executive Summary

M4 motorway Junction 16 is under the control of the Highways Agency (slip roads), Wiltshire Council (circulatory and approach roads) and Swindon Borough Council (north side approach roads).

The junction is required to be remodelled to cater for additional traffic generated by the development at Wichelstowe.

Cabinet has previously (October 2007) objected to the proposed provision in the remodelling scheme for non-motorised users of the junction. Subsequent actions and events require a review of that decision.

Proposals

That Cabinet:

- (i) Withdraws its former resolution (WCC Cabinet 30/10/2007) to object to the remodelling of M4 motorway Junction 16, on the basis of the drawings subsequently relied upon by Swindon Borough Council to discharge Condition 99 of planning permission S/02/2000, specifically with regard to non-motorised users.
- (ii) Authorises the Associate Director for Highways and Transport, in conjunction with the Head of Legal Services, to agree detailed design and negotiate an agreement, or agreements, with Swindon Borough Council and the Highways Agency to facilitate the execution of the remodelling scheme, such agreements to make provision, inter alia, for appropriate maintenance payments towards the additional costs to Wiltshire Council for the ongoing maintenance of the signal controlled junction.

- (iii) Authorises the Associate Director for Highways and Transport to review existing arrangements with the Highways Agency in relation to the management and maintenance of the traffic control signals at Junction 16.

Reason for Proposals

To ensure that Swindon Borough Council can progress the Wichelstowe development, and not be constrained by the occupancy restrictions imposed by Condition 79 of planning permission S/02/2000, as a result of Wiltshire Council's objection to aspects of the Junction 16 capacity enhancement scheme.

Parvis Khansari
Associate Director, Highways and Transport

Wiltshire Council

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Purpose of Report

1. This report follows from a previous Cabinet decision in relation to Junction 16 of the M4 motorway, which is to be remodelled to accommodate the Wichelstowe development in Swindon.
2. It seeks authority, not previously granted, to enter into an agreement with other parties to enable remodelling works to proceed.

Relevance to the Council's Business Plan

3. The following outcomes noted in the Business Plan will be reflected in the decision:

Outcome 1 - Wiltshire has a thriving and growing local economy

Outcome 5 - People are as protected from harm as possible and feel safe

4. The remodelling of Junction 16 will mitigate the junction from becoming a focus of peak period congestion; it will contribute towards the stimulation of the economic development of the area, through the provision of new houses and associated employment at Wichelstowe (Outcome1). The approved scheme will be designed with both capacity and safety for users in mind. It will be subject to formal road safety audits through the design and implementation processes (Outcome 6).

Background

5. In 2005 planning permission was granted for development at Wichelstowe, Swindon (Application S/02/2000). The site location is shown on the plan attached at **Appendix A**. This is a significant development having material traffic implications for the area. One of the principal permitted road links for the site is via Hay Lane, east of Junction 16, the consequence of which will be to focus much of the development traffic at the motorway junction.

6. Modelling analysis of the junction demonstrated a need to provide for additional capacity, and, following public consultation, the general form of junction was agreed between the highway authorities and the Wichelstowe developers. However, Wiltshire County Council's Cabinet, at its meeting on 30 October 2007 was not supportive in relation to specific details pertaining to provision for non-motorised users of the junction.
7. Subsequently, and notwithstanding Wiltshire County Council's decision to not accept details, Swindon Borough Council proceeded to discharge a planning condition (Condition 99¹ of the permission) on 7 April 2008, the discharge of which was required to release an occupancy restriction.
8. The decision of Swindon Borough Council to discharge Condition 99 was challenged by the Campaign to Protect Rural England (CPRE), and another member of the public who were successful in obtaining leave from the court to seek to judicially review Swindon Borough Council's decision. The final hearing for the CPRE's application to judicially review Swindon Borough Council's decision was held in 2009 in the High Court. The CPRE was unsuccessful with their claim and the Court held that all of the grounds of challenge to Swindon's decision to discharge Condition 99 failed.
9. The JR hearing was held in 2009. The outcome of the JR was to find that all of the grounds of challenge to Swindon's decision to discharge Condition 99 failed.
10. The Swindon and Wiltshire Local Enterprise Partnership's Local Transport Body, which was formed in 2013, has now identified the Junction 16 remodelling in its approved list of prioritised transport schemes which was approved in July 2013.
11. Swindon Borough Council has recently approved (S/13/1524) a revised land-use masterplan (LUMP2) for Wichelstowe; the revision was necessary because of viability issues related to the originally approved scheme. LUMP2 re-affirms the intention to pursue the remodelling of Junction 16 in accordance with the original requirements of the 2005 planning permission (Condition 79²), prior to the occupation of 1100 dwellings.

¹ 99. No dwellings shall be occupied until details of the proposed alterations at Junction 16, and improvements to the B4005 Hay Lane and Wharf Road have been approved in writing by the Local Planning Authority in consultation with the Highways Agency, Wiltshire County Council and Swindon Borough Council as highway authorities, Such details will need to ensure that the proposed alterations are safe and legible for all road users, and will need to incorporate specific features to facilitate use by public transport, pedestrians, vulnerable users and cyclists. These features shall be provided with appropriate street furniture, lighting, traffic control equipment, signage and road markings. Such works shall be provided with environmental mitigation measures as agreed with the Local Planning Authority in consultation with the relevant highway authorities. For the avoidance of doubt, the details illustrated on the submitted plans shall not be taken as agreed and any amendments shall be carried out in accordance with the latest technical requirements as set out in the Design Manual for Roads and Bridges or other standards and technical requirements considered appropriate by the Highways Agency

² 79. No more than 1100 of the dwellings hereby granted permission shall be occupied before the improvements to the trunk road network at Junction 16 of the M4 as shown on drawing 938/GA/036 have first been completed in accordance with the requirements of the Highways Agency and the Local Highway Authorities

12. Following a joint effort by Wiltshire Council, Swindon Borough Council, the Highways Agency and Sustrans, optional schemes are currently under consideration to provide a cycle route between Royal Wootton Bassett and Swindon, avoiding the need to travel through Junction 16. Sustrans are actively progressing the favoured option, but funding has not been secured.
13. Works on the Junction 16 site are provisionally planned by Swindon Borough Council to commence in early 2016 with completion by mid 2017. To achieve this, appropriate agreements are required between the principal parties concerned, Wiltshire Council, the Highways Agency and Swindon Borough Council (acting as both a highway authority and landowner/developer).

Previous Cabinet Decision

14. The report and minutes of the October 2007 report to Cabinet are reproduced in full at **Appendix B**. Cabinet resolved:
 - (i) *To agree that:-*
 - (a) *the submitted plans, indicating the developer's best ability to meet Condition 99's requirement 'to incorporate specific features to facilitate use by public transport, pedestrians, vulnerable users and cyclists' fall short of the expectations embodied within national, regional and local transport policies to provide facilities to encourage sustainable transport modes;*
 - (b) *although the anticipated number of non-motorised users might be predicted to be low in proportion to other users, the facilities indicated will not encourage such users, it will afford them a hostile environment, will not provide signal controls at all carriageway crossing areas, and can only provide a relatively tortuous route through the main alterations at the south side of the junction; and that for these reasons considers that the developer's proposals for the provision of facilities for non-motorised users at J.16 do not meet the requirement of Condition 99 and consequently considers that Swindon Borough Council should not discharge Condition 99.*
15. It was indicated in that Cabinet report that legal precedent indicated that a highway authority should consider its position in relation to refusing to enter into a s.278 agreement. The particular legal case concerned Warwickshire County Council where Powergen challenged the refusal of Warwickshire County Council to enter into a s278 agreement in relation to the access to a site for which Powergen had been granted planning consent on appeal. That case was found in favour of Powergen.
16. Parallels can be drawn in relation to the situation at Junction 16. Although Wiltshire Council has not refused to enter into an agreement in relation to Junction 16, the resolution (the scheme plans *'fall short of expectations...to provide facilities to encourage sustainable transport modes'*) effectively ties officers' hands on the matter, as Cabinet has, in effect, formally objected to details of the proposed scheme.

The Outcome of the CPRE v Swindon Borough Council Case

17. The judgment of Mr Justice Hickinbottom is a material consideration in relation to the decision Cabinet makes in relation to this report and its recommendation. It was found by the Judge that the decision to approve the layout of Junction 16 had been properly taken by Swindon Borough Council, and that grounds of challenge by the CPRE all failed. It also found that the design of the scheme had been properly considered, both in relation to the needs of everyday traffic, as well as the needs of buses and non-motorised users. The latter category is a particularly relevant consideration, as the resolution of Cabinet had made specific reference to the provisions encompassed in the design submitted for discharge of Condition 99 for non-motorised users.
18. Grounds 1, 3 and 4 of the JR challenge to Swindon's decision to discharge Condition 99 referred to issues specifically raised in Wiltshire's objection.
19. The judgment also indicates that the evidence was that the '*pedestrian use of Junction 16 is almost nil, and cyclist use minimal*'.
20. A copy of the judgment is included at **Appendix C**.

The Swindon and Wiltshire Local Enterprise Partnership

21. The Transport Vision 2026 for Swindon and Wiltshire Local Enterprise Partnership (SWLEP), appended to the Strategic Economic Plan (SEP), March 2014, identifies at Chapter 5 a list transport priorities to 2021. Included in the list is 'M4 Junction 16 Improvement', which had been identified as one of a list or priorities by the Swindon and Wiltshire Local Transport Body (SWLTB).
22. The Department for Transport gave approval to stage 2 of the SWLTB Assurance Framework in July 2013 and announced funding of £11.3 million for the SWLTB major transport schemes, for spending between 2015 and 2019. The provisional list and indicative spend profile was submitted to the DfT on 31 July 2013.
23. Members of the Swindon and Wiltshire LTB have identified the remodelling of Junction 16 as a second priority (after the dualling of part of the A350 in Chippenham) in a report considered by the body in July 2013. The scheme description is given as:

Significant amendments to the M4 J16 roundabout and approach arms to increase capacity. Possible options include widening the M4 offslips, widening and realigning the circulatory carriageway, and a new junction arrangement at the southern extent to allow direct movement between the A3102 (Royal Wootton Bassett) and the B4005 (Wroughton).
24. The only scheme that has been promoted to date is that against which Condition 99 was discharged.

Royal Wootton Bassett to Swindon cycle route

25. In 2012 the Council consulted on optional routes for cyclists between Royal Wootton Bassett and Swindon. The preferred option provides a route which avoids the motorway junction, utilising instead an existing bridge over the motorway to the west of Junction 16.
26. Work undertaken in the scheme evaluation exercise confirms that acceptable schemes can be delivered that will address, to a significant degree, the difficulties associated with the inevitable conflicts associated with the major motorised traffic oriented motorway junction; The improved junction would still present a somewhat hostile environment to cyclists, notwithstanding the provisions that will be made for non-motorised users.
27. As part of the SEP, the SWLEP has identified and prioritised a number of transport schemes that are set to address known constraints on access and movement and will help realise the full economic potential of the area. A scheme identified as 'Royal Wootton Bassett to Swindon Cycle Network' is identified in the listed schemes as priorities beyond 2021, included under the heading 'Sustainable Transport Improvements'.

Main Considerations for the Council

28. Swindon Borough Council's objective is to progress with the detailed design and construction of the junction alterations; formal agreements will be required to ensure that the eventual works are properly regulated and executed.
29. As matters stand, because of the former Cabinet resolution to object to the discharge of Condition 99 on design considerations, there is an implied instruction that officers cannot progress on the basis of the discharged scheme, and move forward with an agreement to execute the works.
30. Cabinet's former decision predated (i) the decision of Swindon Borough Council to approve the design, (ii) the JR, which found against all five grounds relied upon by the CPRE to challenge the decision of the Borough Council to discharge Condition 99, (iii) the decision of the LEP/LTB to identify the developer's remodelling scheme as a priority scheme for funding and (iv) the identification of optional routes that could provide an alternative route for Royal Wootton Bassett to Swindon cyclists, avoiding Junction 16.
31. Since the Cabinet's decision in 2007 there have been four significant events and it is now considered to be appropriate to make a decision as to whether or not the Council should formally withdraw their former objection, and agree to enter into an appropriate agreements) with Swindon Borough Council and/or the Highways Agency to allow for the works to proceed as and when required, thus enabling the Wichelstowe residential occupations to progress beyond 1100 (as constrained by Condition 79 of the planning permission) at the necessary time.

Safeguarding Implications

32. There are no identified safeguarding issues.

Public Health Implications

33. The proposed junction layout will be submitted to the full rigour of all stages of road safety audit. Initial audits on draft design have already been undertaken.

Environmental and Climate Change Considerations

34. The proposals have been considered in the context of a requirement for an environmental impact assessment, and the Council has now confirmed to Swindon Borough Council in a letter dated 11 March 2014 that an environmental impact assessment is not required. The proposed improvements are designed to effect a reduction in peak period delays at the junction; this could potentially reduce carbon emissions compared with a more congested situation. In practice, it is difficult to assess how much the improvements might contract the peak periods, because drivers accept a degree of delay to travel at their choice of time. Junction improvements will facilitate use by public transport, pedestrians and cyclists.

Equalities Impact of the Proposal

35. There are no identified equalities impacts. Provision will be made within the scheme to help address the needs of vulnerable road users.

Risk Assessment

36. Full road safety audit procedures will be applied in relation to the design and execution of the scheme, in accordance with established procedures.

Risks that may arise if the proposed decision and related work is not taken

37. It is paramount that uncertainty surrounding the ability to proceed with the alterations to Junction 16 is removed, in order that Swindon Borough Council can properly programme and complete the works, so that development and housing delivery will not be adversely affected.

Risks that may arise if the proposed decision is taken and actions that will be taken to manage these risks

38. The developer (Swindon Borough Council in this case) will be required to enter a section 278 agreement with the highway authorities. Legal precedent indicates that, given the approvals already in place (Condition 99 discharge), and the outcome of the judicial review, Wiltshire Council should not seek to refuse to enter such agreement to secure the execution of the works. Should the Council continue to resist the scheme there is a risk that the developer could seek a judicial review to force the Council's position.

Financial Implications

39. The costs of the remodelling works at M4 junction 16 is proposed to be funded from contributions from Swindon Borough Council and an application to the competitive funding element of the SWLEP Growth Fund. Wiltshire Council is therefore not committing monies to the cost of the M4 Junction 16 re-development.
40. In line with other highway development schemes, the inspection and approvals of the works will be recovered through the provisions of a legal agreement requiring the developer to pay an inspection fee in accordance with the approved fee scale.
41. Wiltshire Council will have additional ongoing maintenance commitment once the re-modelling works at the junction are complete. As part of the legal agreement, commuted sums will be secured to offset future maintenance of the additional highway. The work will be factored in to the highway's annual maintenance programme as and when required.

Legal Implications

42. If the Council continues to maintain its objection and refuses to enter into the appropriate legal agreements there is a risk that the Developer and/or Swindon Borough Council may seek to challenge that decision by way of judicial review. If the Developer(s) and/or Swindon Borough Council were successful with their legal challenge (in particularly in light of the Powergen case) it is likely that the Council may find it is ordered by the Court to enter into the appropriate legal agreements in addition to being potentially liable to pay substantial legal costs to the Developer and/or Swindon Borough Council. If the Council decides to review its 2007 decision and enter into the appropriate legal agreements with Swindon Borough Council and/or Highways Agency there is a lower risk of a legal challenge as the substantial issues have already been considered by the Court in the CPRE v Swindon case. Any agreements completed will be made under the authority of the Head of Legal Services.

Options Considered

43. Wiltshire Cabinet may either:
 - (i) Decide to maintain its objection to the scheme on the grounds set out in the Cabinet resolution of 30 October 2007. This option is not recommended for the reasons set out in this report.
 - (ii) Decide to withdraw its 2007 objection to the scheme on the grounds as set out in this report.

Conclusions

44. Since 2007, when matters relating to the discharge of Condition 99 by Swindon Borough Council were regarded as a particularly contentious local issue, matters have progressed. The Condition was subsequently discharged by Swindon Borough Council; the decision to do so was subject to a failed legal challenge, and a scheme to improve conditions at M4 Junction 16 has been prioritised for funding through the SWLEP.
45. Swindon Borough Council needs to progress with its permitted development, and propose to remodel Junction 16 in accordance with the approved scheme (under Condition 99), and in accordance with the originally conditioned occupation trigger (as defined by Condition 79).
46. In order to execute the works, legal agreements will be required between the authorities concerned, namely the Highways Agency, Wiltshire Council, as highway authorities, and Swindon Borough Council as both developer and highway authority.
47. Authorisation is required for the Associate Director, Highways and Transport, in consultation with the Highways Agency, to negotiate with Swindon Borough Council and its transport consultants an acceptable detailed design for the junction, and, in consultation with the Head of Legal Services, appropriate legal agreements to secure the delivery of the works and commuted maintenance payments.

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The following unpublished documents have been relied on in the preparation of this Report:

None

Appendices:

Appendix A Wichelstowe Site Location Plan

Appendix B Cabinet Report, 3 October 2007 and Minutes of Cabinet Report, 30 October 2007

Appendix C Judgment of Mr Justice Hickinbottom