

Report for: **Cabinet**

Date of Meeting:	18 th November 2021
Subject:	“Kodak” Wealdstone Footbridge – Land assembly, Compulsory Purchase Order (CPO) and change in procurement approach.
Key Decision:	Yes - this will incur capital expenditure of over £0.5million and is a significant scheme
Responsible Officer:	Dipti Patel – Corporate Director Community Mike Butler Interim Director Environment
Portfolio Holder:	Councillor Varsha Parmar – Portfolio Holder for Environment and Climate Change; Councillor Natasha Proctor – Deputy Leader and Portfolio Holder for Finance and Resources
Exempt:	No
Decision subject to Call-in:	No
Wards affected:	Marlborough and Wealdstone
Enclosures:	Appendix 1 – Bridge Location Map Appendix 2 – Procurement Regulation 12 Appendix 3 – Wealdstone Footbridge – Options Considered Appendix 4 – Schedule of Ownerships (CPO) Appendix 5 – Bridge Planning Application – submitted 4/10/21 Appendix 6 – FHSF Grant Letter Offer Appendix 7 – Report on Lease or Freehold Title Appendix 8 – Formal Legal Advice – CPO (EXEMPT) Appendix 9 – Kodak Footbridge Proposal (NWR initial estimate) Appendix 10 – Five parcels of affected land (CPO) Appendix 11 – Equalities Impact Assessment (EqIA)

Section 1 - Summary and Recommendations

This report seeks approval from the Cabinet to authorise Corporate Director Community to carry out work in preparation for the making of a Compulsory Purchase Order (CPO) in respect of non-Council owned property comprising five parcels of land at the Barratt Way Industrial Estate in Tudor Road and Big Yellow Development site at Hailsham Drive (“the Property”) in the event that negotiations to acquire the Property through private treaty fails or is delayed. The CPO Land is required in connection with the Council’s proposal to construct a new footbridge across West Midland Railway Lines which cut Wealdstone in half into a north-eastern segment and a south-western segment.

Cabinet is also asked to approve the chosen procurement option to deliver the footbridge.

Recommendations:

Cabinet is requested to:

1. Authorise Corporate Director - Community to carry out work in preparation for the making of a Compulsory Purchase Order (CPO) in respect of the Property as shown edged red on the attached plan at paragraph 2.6 (also Appendix 10). This work will include;
 - Appoint, if necessary, land referencers to review all interests in the Property and produce a draft schedule and plan for the CPO and
 - Serve request for information notices under section S16 of the Local Government (Miscellaneous Provisions) Act 1976 on those potentially affected by the proposed CPO
2. Authorise Corporate Director Community to negotiate with landowners (freehold owners and leasehold owners) and to acquire through private treaty the Property.
3. Note that a further report will be brought to the Cabinet at a later stage to seek authority to secure the making, confirmation, and implementation of a CPO if the Property cannot be acquired by private treaty
4. To approve the Direct Award to Network Rail (NWR) as the supplier to build the bridge in accordance with Regulation 12(7) of the Public Contracts Regulations 2015 relating to contracts to establish co-operation between contracting authorities (Appendix 2).
5. Approve the option of pursuing a competitive tender process following the design phase of the project, in the event that the final proposal from Network Rail is unsatisfactory or does not provide value for money,
6. To delegate authority to Corporate Director - Community following consultation with the Director of Finance and Deputy Leader and Portfolio Holder for Finance and Resources to award contract to NWR following the evaluation of the Direct Award option OR make a decision not to pursue that route and instead undertake procurement to identify

a build partner to award contract(s) for the delivery of the Pedestrian Bridge.

7. Approval is also required to pursue a Direct Award to NWR as the Cabinet Report dated 20 May 2021 foresaw a competitive process only.

Reasons (for the recommendations):

Capital expenditure likely to be near or greater than 500K. Funding has been secured from Ministry of Housing, Communities and Local Government (MHCLG) by way of Future High Street Fund (FHSF) to construct the Kodak Footbridge. There are five parcels of land that need to be purchased. Negotiations are still ongoing with the landowners to acquire the Property. In addition to the construction costs there will be associated costs with regards to legal fees, Counsel's fees, Land referencing fees and compensation for the businesses and landowners. The costs will be funded from the FHSF. The construction of the Kodak Footbridge, the CPO and all associated costs are unlikely to exceed £8.9m, which is made up from the funding provided by the FHSF plus £1.76m from the Borough CIL to construct the Footbridge. The CPO process must begin by December 2021 to meet the FHSF requirements to build the footbridge by early 2024. The CPO process can take up to 18 months.

The procurement option would allow the Council to collaborate with NWR to deliver the project within budget. If contractors are required to undertake the works, it is expected that NWR will commission the contractors using their own competitively procured frameworks.

The Planning application for the bridge was submitted on 04.10.2021 (Appendix 5 – Main document).

This would allow the Council to collaborate with NWR to deliver the project within budget. If contractors are required to undertake the works, it is expected that NWR will commission the contractors using their own competitively procured frameworks.

Section 2 – Report

Introductory paragraph

2.1 In May 2021 Cabinet agreed to delegate authority to Corporate Director Community to enter into a Grant Agreement with Ministry of Housing, Community and Local Government (MHCLG) to secure funding to invest in a new pedestrian bridge, public realm improvements and an Intelligent High Street in Wealdstone and to commence a competitive process.

This report builds on the May report to:

- a) enable the council to use CPO to assemble land for the Pedestrian Bridge and
- b) enter into the most beneficial procurement route, which will be through a Direct Award to Network Rail.

2.2 Regeneration of Wealdstone and the town centre is a priority for Harrow Council. Harrow and Wealdstone is designated as an Opportunity Area in the Local Plan and the London Plan, identifying it as an area which is set to see

significant housing and employment growth. Wealdstone regeneration includes several large developments including the Kodak Factory, the Civic Centre, and the Leisure Centre. Over the next 10 years, developments will deliver over 5,500 new homes, a school, and a health centre creating around 3,000 jobs as a result of development in the area. The development of the former 'Kodak' site for housing and commercial uses, means there will be a significant increase in the number of people living and working in the area.

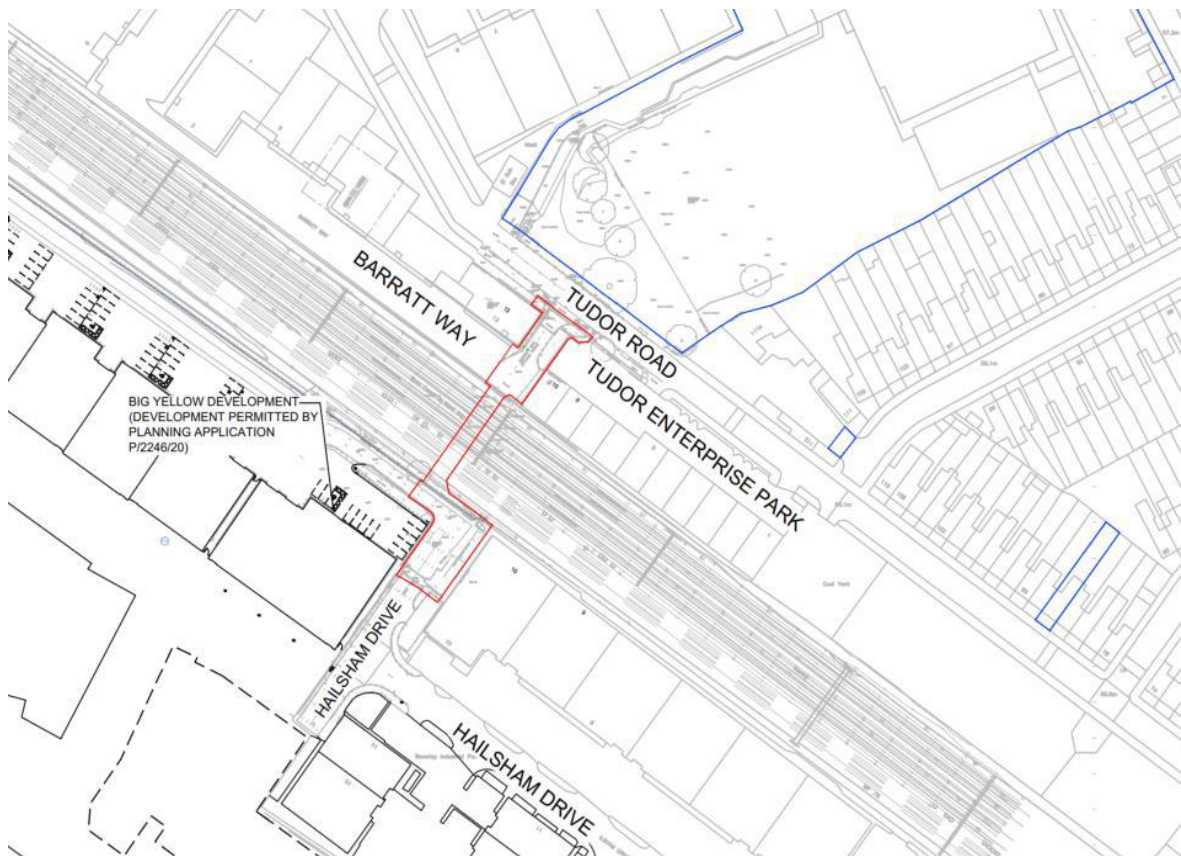
2.3 A 'liveable neighbourhood study' looked at how people get between different activities and amenities and move around Wealdstone. It identified where changes could be made to improve the function and liveability of the area, while encouraging more sustainable methods of travel and reducing car dependency, in line with the London Mayor's transport strategy. As a result of the study the Council put forward a funding bid to the Ministry of Housing, Communities and Local Government (MHCLG) to support building of a footbridge across the railway lines in Wealdstone. Cabinet approval was obtained in May 2021 following the funding award by MHCLG after the successful Kodak Bridge business case bid by the Council.

2.4 The Kodak Footbridge is to be situated to the north east of the Kodak development site in Wealdstone providing a new fully accessible walkway from the Kodak Factory site (now known as Harrow View East) over the West Coast Mainline to connect to areas to the north of the High Street. The Kodak Footbridge will secure a high-quality inclusive pedestrian route from the new community of 1800 new homes in Harrow View East and will overcome the severance caused by the West Coast Mainline. The new route will create a more attractive, shorter and more direct pedestrian route within the locality connecting homes with schools, green spaces and the north end of Wealdstone Town Centre, which will result in more people persuaded to walk, fewer car journeys, better air quality and improved health. Current alternative routes are either via a non-accessible footbridge 0.6miles to the north or offer a poor pedestrian environment 0.6miles to the south at Headstone Drive with very narrow pavements alongside a busy road prone to flooding. The poor pedestrian environment, street clutter and cleanliness, all create additional barriers affecting walking and cycling in the neighbourhood.

2.5 MHCLG agreed to allocate funding up to **£7,448,583** via the Future High Street Fund (FHSF) across the 2021/22, 2022/23 and 2023/24 financial years. Funding from 2022/23 onwards will be subject to the outcome of the Spending Review as per Appendix 6.

2.6 The funding is provided to form part of the necessary capital investment required for delivery of the Kodak Footbridge at Wealdstone. MHCLG expects the Council to use the funding provided for the purposes outlined in the business case. The Council provided an extra £1.76m in match funding from its own CIL which will only be used once the FHSF fund is exhausted.

2.7 Below is a map of the location where the Kodak Footbridge will be located.



2.8 The proposed Kodak Footbridge is located on land which falls under several different ownerships. To the north, Tudor Road is a public highway and Barratt Way Industrial Estate is private land. The railway line over which the bridge will cross is the property of Network Rail. To the south, the land at the northern end of Hailsham Drive is in private ownership, with the adjacent Hailsham Drive also being public highway. The Kodak Footbridge will provide a new footpath connecting Tudor Road to Hailsham Drive. The new footpath on completion will become a public highway maintainable at the public expense.

3 Options considered

3.1 An assessment of the most suitable crossing points for a footbridge across the railway lines was carried out by the Head of Traffic, Highways & Asset Management and this is attached (Appendix 3). The assessment identifies the most suitable location for the footbridge as the location of the Kodak Footbridge. Two options have been considered for acquiring the Property required for the construction of the Kodak Footbridge:

Option 1: Acquisition of leasehold and freehold properties through voluntary negotiations only. This is ongoing. For a schedule of ownership see Appendix 4 and for a full report on Lease or Freehold Titles Appendix 7. Formal Legal advice re CPO for Wealdstone Bridge is attached as Appendix 8.

Option 2: As Option 1 but with the back-up of a Compulsory Purchase Order should voluntary negotiations be unsuccessful or become protracted resulting in delay and the loss of the MHCLG funding frustrating the delivery of Kodak Bridge.

Option 3: Do nothing – this would result in a lost opportunity to secure funding and provide infrastructure found necessary to regenerate the area.

No further options were considered in relation to the acquisition of land for the construction of the Kodak Footbridge. Option 1 and Option 3 were rejected as it was considered necessary to secure the funding and deliver the Kodak Footbridge to rejuvenate the area. Option 2 is considered necessary to obtain a CPO as a back-up in case agreements are not reached with leaseholders or freeholders to acquire the relevant interests in time to secure the MHCLG funding. Failure to agree the level of compensation is not a ground for delaying or refusing the CPO.

Current situation

1. Informal negotiations are ongoing with local landowners/ lease holders (Appendix 4) to come to an amicable agreement before the need for the CPO arises and the process is instigated in December 2021.
2. An initial quote has been received from NWR, which is attached as Appendix 9 to review the feasibility study for the footbridge which has been partially carried out by Atkins. A detailed quote will be provided by NWR in 2022 to cover their construction and associated costs.

4. Implications of the Recommendation Considerations

4.1 The making of the CPO by the council could be challenged by anyone with an interest in the land. If this was the case an Inquiry would be necessary, before confirming the CPO there could be significant delay and additional costs before a decision was reached. Estimated construction costs have been determined but the final overall costs of the bridge construction will not be finalised until the planning application is approved and appropriate pricing is received from NWR.

4.2 There is a risk that a challenge to the CPO could lead to an expensive Inquiry into the making of the CPO. The council has commenced the informal consultation with the relevant leaseholders and freeholders to secure the Property in the first instance through negotiation.

5.Consultations

5.1 The relevant affected landowners have been consulted on the proposal to build a new Footbridge which will affect some small sections of their land. Negotiations are ongoing with regards to land purchases.

5.2 The public has been consulted via the 'Commonplace' website, 'My Harrow' newsletter and Wealdstone Action Group. There are plans to hand out leaflets in Wealdstone and place some in the library and other public places. Local councillors have been consulted via email.

Ward Councillors' comments

Ward Councillors have been kept informed and a copy of this report has been forwarded. No feedback or comments affecting this report have been received.

6.Environmental Implications

6.1 The bridge fits in with the local environment and does not obstruct any view or light for the surrounding industrial estates. There will be little or no impact on local residents. The footbridge will promote walking and a healthy

lifestyle, reducing unnecessary vehicle journeys which will reduce carbon emissions and will have a positive impact the local air quality.

6.2 A full Environmental Impact Assessment will be carried out before the second report to the Cabinet is submitted in connection with the CPO.

7 Risk Management Implications

- 7.1 A CPO is essential if satisfactory private treaty acquisition of proprietary interests in the Property cannot be obtained. Whilst it is hoped that all interests in the Property can be acquired by negotiation, the Council's vision for the construction of the Kodak Footbridge may not be realised if negotiations are not successful or concluded within the time frame set by the MHCLG, the funding providers. To avoid this potential risk, authority to make a CPO in respect of the Property(s) will be sought in due course.
- 7.2 If a CPO is made by the Council and confirmed by the Secretary of State, the Council will be exposed to compensation from the owner of the Properties. If the owners of the Properties object to the making of the CPO the Council may also be exposed to the costs of a public inquiry. It has been estimated that the MHCLG funding will cover these costs. The Council will continue its negotiations with the Property owners to reach a point whereby the necessary land and rights can be acquired without the need for CPO powers.
- 7.3 The CPO, when confirmed by the Secretary of State, ceases to be exercisable after the expiration of three years from the date of first publication of confirmation of the CPO. However, it is anticipated that should the CPO be confirmed, it will be implemented as soon as possible in order that the Property can be vested in the Council.
- 7.4 There is a small risk that the Secretary of State consents could be refused. The Council will be seeking Counsel's advice on the CPO to minimise risk.

Risks included on corporate or directorate risk register? **Yes**

Separate risk register in place? **Yes**

The relevant risks contained in the register are attached/summarised below.
Yes

The following key risks should be taken into account when agreeing the recommendations in this report:

Risk Description	Mitigations	RAG Status
Cost overruns or delays to construction schedule may result in program exceeding the initial cost estimate. Furthermore, inflation remains uncertain and may impact construction cost.	If this is identified pre-contract, then the project could be reviewed and cost pressures would be managed by the council in line with its normal processes, either by	Amber

Risk Description	Mitigations	RAG Status
	<p>rescoping or, subject to finance agreement, exploring additional alternative funding availability. If it is post contract award this may be partially mitigated through appropriate risk transfer in the procured construction contract and is also partially covered through the 40% contingency.</p>	Amber
<p>Negotiations with owners to acquire land fail or the land acquisition costs are higher or take longer than expected.</p>	<p>If this is identified pre-contract, then the project could be reviewed, and appropriate actions may be taken. If it is post contract award the risk is borne by the council. However, a contingency of 40% has been included to account for this uncertainty.</p>	Amber
<p>Planning permission for Kodak Footbridge could fail to get approved or result in delays to construction and increase in construction cost.</p>	<p>If this is identified pre-contract, then the project could be reviewed. Post contract award the risk is borne by the council and will manage risks through pre-existing programs and systems. However, a contingency of 40% has been included to account for this uncertainty. This risk will be mitigated by the direct award route.</p>	Amber
<p>Network Rail take longer than anticipated to provide the necessary permissions to build the Kodak Footbridge resulting in delays to construction and cost overruns.</p>	<p>If this is identified pre-contract, then the project could be reviewed and cost pressures would be managed by the council in line with its normal processes, either by rescoping or, subject to finance agreement, exploring additional alternative funding availability. Post contract award this risk is borne by the council and may have to find a means of funding if cost overruns. This risk will be mitigated by the direct award route.</p>	Amber

Risk Description	Mitigations	RAG Status
Rail possession in December 2023 cannot be obtained or bad weather will affect bridge lift/ installation across the rail lines.	Work closely with NWR and other rail authorities at an early stage to ensure a possession slot is available. However, inclement weather can affect cranes and prevent bridge and subsequent installation. This risk will be mitigated by the direct award route.	Amber
Estimated operational and maintenance costs of the Kodak Footbridge may be larger than current forecasts.	If this is identified pre-contract, then the project could be reviewed, and appropriate actions may be taken. If it is post contract award the risk is borne by the council and will need to develop a method for increased funding. This risk will be mitigated by the direct award route.	Amber

8 Procurement Implications

A competitive tendering process for the construction of the new footbridge has been fully considered but due to funding and time constraints Network Rail (NWR) were approached as a further option. They have unique expertise in the railway industry and associated bridge constructions. If a competitive process were to be followed, it would be necessary for the Council or a Council appointed contractor to obtain certain permissions from NWR relating to building around the railway infrastructure. This would incur a substantial fee and pose a significant risk of delay to the project. A Direct Award to NWR fulfils the criteria under Regulation 12(7) of the Public Contracts Regulations 2015 (as amended) relating to contracts to establish co-operation between contracting authorities (Appendix 2). This allows us to collaborate with NWR to successfully deliver the project.

A Direct Award to NWR fulfils the criteria set out in Regulation 12(7) of the Public Contracts Regulations 2015 (as amended) relating to contracts to establish co-operation between contracting authorities (Appendix 2). As such, this route is compliant with the Public Contract Regulations.

The proposed contract with NWR will be a two-stage contract, a design stage and a detailed design and build stage.

The most significant portion of the cost will be in the build phase. This work will be procured by NWR using their own competitively tendered framework. Additionally, there is a break point at the end of the design phase so that if the Council is in any way dissatisfied with the performance of NWR or with the final proposal for the Build Stage there is an option to take the design work and competitively tender the build phase.

The above option is the preferred option, however only if the proposal from NWR demonstrates value for money and delivers on other factors like meeting timescales. If it does not we will as per our recommendation number 5 pursue a delivery partner through a competitive procurement.

9 Legal Implications

The Cabinet has the authority to make key decisions under Article 13 of the Constitution.

- 9.1 The Council has the power through various enactments to make a Compulsory Order and to apply to the Secretary of State (SOS) for confirmation of the order. The Council has had regard to the Guidance on Compulsory purchase process and the Crichel Down Rules which was updated in July 2019. This provides that the Council should use the most appropriate power to make the order and there should be an overwhelming case in the public interest to make the CPO.
- 9.2 The power commonly used by local authorities is Section 226(1) (a) of the Town and Country Planning Act 1990, as amended by the Planning and Compulsory Purchase Act 2004. The section provides that a local authority shall, on being authorised to do so by the SOS, have power to acquire compulsorily any land in their area if they are satisfied that the acquisition will facilitate the carrying out of development, redevelopment or improvement on or in relation to the land. However, the power must not be exercised unless the authority thinks that the development is likely to contribute to the achievement of the economic, social and environmental well-being of the area.
- 9.3 The Council also has powers under sections 239, 240, 246 and 250 of the Highways Act 1980 to purchase compulsorily the land and the new rights over land for the purpose of the construction and improvement of highways and the use of land in connection with the construction of new highways. In this instance the powers under the Highways Act 1980 appear to be the most appropriate, to compulsorily acquire the Property or any part of it in the event negotiations are not concluded in time for the Kodak Footbridge to be delivered.
- 9.4 The Council considers that there is a compelling case in the public interest for the provision of the Kodak Footbridge. The Kodak Footbridge will provide a pedestrian link between the two sections of Wealdstone currently dissected by the railway line and unlock significant transport, economic and social benefits, and will enable the realisation of important objectives in planning policy. It is supported by the National Planning Policy Framework (NPPF).
- 9.5 The private loss arising from the CPO does not outweigh the considerable benefits provided by this scheme. The CPO will not have an excessive or disproportionate effect on the owners, and they will be compensated.
- 9.6 The delivery of the Kodak Footbridge scheme provides significant public benefits and is in the public interest and meets the other tests in the CPO Guidance for compulsory purchase such as:
 - The purposes for which the CPO is made justify interfering with the human rights of those affected.

- The Council has a clear idea of how it will use the land which it needs to acquire.
 - The Kodak Footbridge scheme is fully funded, embedded in planning policy and the related planning application has been submitted.
 - Informal negotiations have commenced, and formal, meaningful negotiations are to take place and will continue to take place throughout the CPO process.
- 9.7 The Council proposes to seek legal advice from Counsel to ascertain the most appropriate power under which the CPO should be made and an estimation of the probability that the SOS will confirm the CPO. This will minimise the risk of any challenge.
- 9.8 The Council has the power under the Highways Act 1980 to construct a footbridge to carry a public footpath and thereafter maintain such footpath and bridge structure.
- 9.9 The Council will contract with Network Rail to construct the Kodak Footbridge. It will also secure rights for the public to use the footbridge in perpetuity and secure a licence from Network Rail to enable the future maintenance of the Kodak Footbridge by the Council.

10 Financial Implications

- 10.1 The Council has been awarded a funding of £7,448,583 over a 3-year period (2021/22 to 2023/24) for Wealdstone investment from the MHCLG Future High Streets Fund. This is match funded by £1.76m of Community Infrastructure Levy. The project is included in the approved 2021/22 Capital Programme, with a total funding of £9.209m over 3 years.
- 10.2 Two projects were included in the funding application, namely Kodak Footbridge and Intelligent High Street with estimated costs of £8.949m and £0.26m respectively. In the case of Kodak Footbridge, there is a budget allowance for land acquisition. The final costs associated with land acquisition will not be known until the negotiation process (or CPO process, should this be required) is complete.
- 10.3 Within the funding envelope, a contingency sum has been included to provide an allowance for any additional unforeseen costs, in particular in relation to the construction of the footbridge. The recommended procurement option provides an opportunity to work collaboratively with Network Rail so that an assessment of the overall costs and budgetary impact can be made at the earliest possible time.
- 10.4 At this stage, it is envisaged that all costs associated with this project will be met from the funding stated in para 10.1.

11 Equalities implications / Public Sector Equality Duty

- 11.1 The Equality Act 2010 places a duty on the Council as follows:
- (1) A public authority must, in the exercise of its functions, have due regard to the need to—

- (a) eliminate discrimination, harassment, victimisation and any other conduct that is prohibited by or under this 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.

The relevant protected characteristics are:

- age;
- disability;
- gender reassignment;
- pregnancy and maternity;
- race;
- religion or belief;
- sex;
- sexual orientation.

11.2 This report has considered the Equality Act 2010 and how its proposals are designed to reduce the inequalities of outcome which result from socio-economic disadvantage. The Council is committed to improving the quality of life and wider participation for all the economic, educational, cultural, and social and community life within the borough. It is believed that the Kodak Footbridge will benefit all sections of society as the bridge will have lifts at either end (Appendix 11).

12 Council Priorities

1. Improving the environment and addressing climate change

The bridge will encourage more walking and less reliance on polluting motor vehicles and provides easy access to schools and other amenities in and around the town centre.

2. Tackling poverty and inequality

Those who cannot afford any form of transport or prefer walking to promote good health will have easy access to local amenities.

3. Building homes and infrastructure

The bridge will link the new 'Kodak' development site to schools on the opposite side of the railway as well as Wealdstone town centre.

4. Addressing health and social care inequality

The new footbridge will promote healthy walking and take people out of vehicles, preventing short, environment polluting journeys.

5. Thriving economy

The bridge will bring communities closer together from either side of the railway lines and encourage the developing 'Kodak' community to easily walk to the High street for local shopping. This will make the High Street a busy place and increase spending habits.

Section 3 - Statutory Officer Clearance

Statutory Officer: Jessie Mann

Signed on behalf of the Chief Financial Officer

Date: 05/11/2021

Statutory Officer: Mrinalini Rajaratnam

Signed on behalf of the Monitoring Officer

Date: 03/11/2021

Chief Officer: Dipti Patel

Signed by the Corporate Director

Date: 08/11/2021

Head of Procurement: Nimesh Mehta

Signed by the Head of Procurement

Date: 03/11/2021

Head of Internal Audit: Neale Burns

Signed on behalf of the Head of Internal Audit

Date: 03/11/2021

Mandatory Checks

Ward Councillors notified: YES

EqIA carried out: YES

EqIA cleared by: Shumaila Dar (Appendix 11)

Section 4 - Contact Details and Background Papers

Contact: Manzoor Hussain, Project Manager, 07731 591792 Email:
manzoor.hussain@harrow.gov.uk

Background Papers: None

Call-in waived by the Chair of Overview and Scrutiny Committee

NO