

**AUDIT**  
**22<sup>ND</sup> SEPTEMBER 2020**

**REPORT OF THE HEAD OF PLANNING, ECONOMY AND REGENERATION**

**HOUSING INFRASTRUCTURE FUND: PLANNING APPEAL DECISION AND RISK  
IN RELATION TO FUNDING**

**Cabinet Member** Cllr Richard Chesterton  
**Responsible Officer** Mrs Jenny Clifford, Head of Planning, Economy and  
Regeneration

**Reason for Report:** To respond to a Member request for Audit Committee to consider the recent planning appeal decision at Siskin Chase (the Colebrook site allocation), Cullompton (19/00118/MOUT) in respect of the funding of the Cullompton town centre relief road scheme and the risk profile in respect of the recovery of Housing Infrastructure Funds from development. This report follows the report on the Housing Infrastructure Fund (HIF) projects considered at the meeting of Scrutiny Committee on 20<sup>th</sup> July 2020.

A recent appeal decision for a site in Cullompton from the Planning Inspectorate considered the Council's request for developer financial contribution from the application towards the funding of the relief road through S106 agreement. This report therefore focuses upon the Cullompton HIF scheme. For this project, the Council has entered a £10 million grant funding agreement with Homes England.

**RECOMMENDATION:** That Audit Committee consider the contents of this report.

**Financial Implications:** The Housing Infrastructure Fund will play a pivotal role in bringing forward the corporate aspirations to facilitate growth within the district which in turn will help boost the economy. The £10m for the Cullompton HIF scheme has been secured as recoverable grant to forward fund town centre relief road infrastructure in Mid Devon.

At the outset of the bid process it was envisaged that no additional contributions from the District Council were required over and above those already reflected in existing budgets. However as the discussions with Homes England progressed and the formal offer letters for the schemes were received, it became clear that an element of forward funding (cash flow) from this Council would be needed to provide funding for the projects. This was for two reasons:

1. The grant funding agreements with Homes England for each project specifies that the HIF funds will be drawn down in accordance with a programme of payments that has been agreed with Homes England. Whilst these payment claims are programmed by quarter and can be in advance of spend, it is still possible that the Council will be required to bear project costs in the short term until the quarterly HIF draw down payment is claimed and made.
2. Funds are being made available through the HIF programme on the basis of a recoverable grant. Through the terms of the grant funding agreements entered into between the Council and Homes England, the Council is required

to secure the recovery of the HIF funding from housing developers. It is envisaged that this will be via future S106 agreements to be entered into as part of the planning process. This is to ensure that public funds are not subsidising developer profit. There will therefore be a time lag between when monies needed to be expended in order to deliver the infrastructure and the recovery of funding from developers via S106 agreement. For the Cullompton relief road project in particular the overall project is expected to cost at least £15m, with £10m forward funding being provided through HIF. £5m will need to be forward funded by the Council until such time as S106 monies are collected from the housing development that is unlocked by the provision of the road. This report deals with the future negotiation of those funds.

The forward funding of monies for delivery of this project by the Council has been expected to be achieved through utilisation of the Council's existing financial resources and/or taking a loan via the Public Works Loan Board and is reflected in the capital programme. It has been intended that any interest charges accrued in the forward-financing of infrastructure will be clawed-back through s106 arrangements. The financial risk to the Council has previously been assessed as one of phasing to deliver the infrastructure up front for residents' benefit with the anticipated net cost to the Council being zero.

**Budget and Policy Framework:** None directly in terms of the Council's policy framework. The agreed 2020/21 capital programme includes this HIF scheme within the general fund projects and the projects are also built into the medium term financial plan capital programme to 2023/24. The assumptions over forward funding and payback are being kept under review.

**Legal Implications:** This report includes reference to the grant funding agreement that has been entered into between the Council and Homes England. The Council is the accountable body for the projects, although it is being delivered by Devon County Council. The contents and terms of the grant funding agreement has been considered by the Head of Legal (Monitoring Officer) following protracted negotiation with Homes England. At the meeting of Cabinet on 30<sup>th</sup> May 2019 it was resolved as follows:

1. To enter into grant funding agreements with Homes England to secure £18.2 million Housing Infrastructure Fund monies and grant delegated authority to the Section 151 Officer in consultation with the Group Manager for Legal Services to finalise and sign the agreements;
2. To forward fund the Cullompton town centre relief road and Tiverton Eastern Urban Extension phase 2 junction projects as set out in paragraphs 5.1 and 5.4 including taking out any associated borrowing.

The grant fund agreement was subsequently signed in accordance with the resolution on 4<sup>th</sup> December 2019.

A further area of legal implication is pursuance of S106 legal agreements as part of the planning process in order to secure developer contributions towards the cost of the delivery of the infrastructure in question. It is through this means that the Council proposes to recover the HIF funds as required by the grant funding agreement.

Entering into S106 agreements in this way is a standard requirement and would have been sought irrespective of whether this HIF funding was forthcoming or not.

Other legal implications will also arise in connection with the relief road project in terms of land assembly and acquisition, the legal interests of existing sports providers likely to be affected and any loss or substitution of public open space. The adoption and implementation of an Air Quality Action Plan (where an authority has designated one or more Air Quality Management Areas) is a statutory requirement under Part IV of the Environment Act 1995 for Local Air Quality Management (known as the LAQM regime). However the relief road project itself is not the main focus of this report.

A planning application has been submitted to this Council by Devon County Council for the Cullompton town centre relief road to connect Station Road with Duke Street (reference 20/00876/MFUL). This planning application is valid and is currently under consideration and will be referred to a future meeting of Planning Committee for determination. Nothing within this report is considered to affect the assessment, recommendation or future outcome of that application which will be determined on its planning merits under section 70 of the Town and Country Planning Act 1990. Audit Committee is reminded that they are not able to assess an individual planning application and any members of Audit Committee that are also on Planning Committee will need to ensure that their future consideration of that application remains unfettered and that there is no bias, predetermination, or appearance of such.

**Risk Assessment:** The consequences to the authority of not securing an adequate funding package for the infrastructure in question would have been serious as it could have compromised the ability to deliver much needed housing and affect housing land supply. At examination the Local Plan Review Inspector wished to be assured that the Plan was sound and provided deliverable housing sites in the early years of the Plan together with a supply of developable sites later in the Plan with a reasonable prospect of being developed at the point envisaged. The funding agreements with Homes England over both HIF schemes were therefore entered into against this wider background with funding being made available by the Treasury via Homes England specifically to unlock planned housing growth through the provision of key pieces of infrastructure.

To qualify for HIF funding, the proposed infrastructure has needed to meet the HIF scheme criteria and deliverables, as tested through a prolonged due diligence assessment process.

The need to meet agreed project milestones and the fund availability cut off dates remain a significant risk. The grant agreements contain milestone date targets for key stages of each project with the ultimate requirement that the infrastructure be completed by 31 March 2023 (Cullompton) in order to meet funding availability periods. Maintaining progress on the projects and ultimately securing their delivery within the requirements of the grant fund agreements including timescale will be challenging. The grant agreement contains fund clawback provisions. Officers from both Councils will continue to work to de-risk the projects, liaise with Homes England and seek their delivery in accordance with the grant agreements. It should be noted that this does not prejudice or predetermine the assessment and decision making process on the current planning application for the Cullompton relief road project.

There remain particular risks with the Cullompton relief road project. Significant technical work has now been undertaken to support the planning application and its accompanying environmental statement. However more technical work will be needed to support the detailed design and delivery phases post planning. At this time the planning process has not been completed, land remains to be assembled, affected sports facilities moved and replacement sports and recreation space provided. These together with the construction phase result in a very tight timescale.

The recovery of forward funding by the Council via developer S106 agreement payments is dependent upon housing schemes coming forward within the timescale anticipated. The Council's adopted Local Plan and the Local Plan Review set out the policy framework for this. The housing trajectory within the Local Plan Review does not assume that any homes that the relief road will unlock will be delivered within the first five years of the plan. Risk to achieving the required housing delivery rate is therefore reduced. Other forms of risk reduction include proactive working to support activities such as masterplanning that will aid the delivery of the key housing sites in question. Officers will continue to work proactively to deliver these planned for sites, but this is ultimately not under the Council's control. Planning applications for some of these schemes have been received. Again, this does not prejudice or predetermine the assessment and decision making process on these applications.

The impact of COVID-19 upon the economy, the construction industry and housing market are at the time of the writing of this report not fully known and currently present a further risk to achieving project milestones, the delivery of homes and therefore the recovery of HIF funding and the Council's forward funding within the initially expected timescales. Homes England is alive to these risks and has engaged with the Council upon them. It is expected that the impact of COVID-19 will form part of the considerations under the quarterly monitoring requirements for each of the projects. The intention of this monitoring being to have ongoing project engagement and management, to anticipate and respond accordingly to address any concerns and reduce risk of project non delivery or grant fund clawback. These quarterly monitoring returns also include examination of project level risk assessments.

The risks above are primarily project delivery risks. The focus of this report is whether the financial risks associated with the recovery of scheme costs via developer S106 agreements through the planning process have changed as a result of the recent appeal decision on land west of Siskin Chase, Cullompton (Colebroke). These specific risks are addressed in **Appendix 2** to this report.

**Equalities Assessment:** There are none directly arising from this report.

**Impact on Climate Change:** The HIF scheme in question relates to a highway infrastructure project. On the face of it, this may appear at odds with the Council's climate change declaration and the target of net-zero carbon emissions by 2050. However the Cullompton relief road will deliver wider improvements to air quality within the Cullompton Air Quality Management Area as well as resultant opportunities for improvements to the town centre environment by reducing town centre traffic. Idling cars in queues of traffic waste fuel, impact on air quality and contribute to climate change. The scheme and strategic scale development that it will unlock have / will be subject to environmental impact assessment which will seek to reduce or mitigate impact. The scheme is important to the delivery of development

within the Local Plan Review which provides for sustainable development up to 2033 and contains policies for the protection and enhancement of the natural as well as the built environment.

**Relationship to Corporate Plan:** This infrastructure project is considered vital to enable development identified in the Local Plan Review to come forward and make a valuable contribution to delivering the priorities of the Corporate Plan 2020 to 2024; Economy, Homes, Community and Environment. In his examination of the Local Plan Review the Inspector was keen to understand the likelihood and timescale for the delivery of the Cullompton town centre relief road and clearly saw it as being crucial to unlocking development planned for in the Cullompton area.

## **1.0 BACKGROUND: HOUSING INFRASTRUCTURE FUND.**

1.1 In July 2017 the Government launched its £2.3 billion Housing Infrastructure Fund to finance infrastructure to unlock housing delivery. This funding to be awarded on a highly competitive basis. The Government has made this fund available to:

- Deliver new physical infrastructure to support new and existing communities;
- Make more land available for housing in high demand areas, resulting in new additional homes that otherwise would not have been built;
- Support ambitious local authorities who want to step up their plans for growth and make a meaningful difference to overall housing supply; and
- Enable local authorities to recycle the funding for other infrastructure schemes, achieving more and delivering new homes in the future.

1.2 This Council made two bids for HIF funding with proposals under this fund capped at £10m each. The two schemes relate to highway infrastructure schemes which will unlock development sites identified within the adopted Local Plan and the Local Plan Review which is at a pre-adoption stage. The Council's HIF bids were considered and agreed at the meetings of Cabinet on 31<sup>st</sup> August 2017 and 23<sup>rd</sup> May 2018 with authority granted to make the bids and prioritise that relating to Cullompton.

1.3 The funding was offered on the basis of a locally recoverable grant. There is a requirement to recover the HIF funds from development. This Council will retain those funds locally (rather than return them to Homes England) and will need to recycle them into projects or schemes that achieve further accelerated housing delivery. Cabinet at the meeting of 30<sup>th</sup> May 2019 agreed to enter into the grant find agreements and granted delegated authority for their finalisation and signing.

## **2.0 BACKGROUND: CULLOMPTON HIF PROJECT: CULLOMPTON TOWN CENTRE RELIEF ROAD**

2.1 At Cabinet on 23<sup>rd</sup> May 2018 it was agreed to proceed with the £10 million Cullompton HIF bid on the basis of delivering a town centre relief road to the

east of Cullompton, which will improve capacity at the motorway junction together with achieving a reduction of traffic flows through the town centre resulting in air quality and town centre amenity benefits. The overall project cost was expected to be £15 million, £10 million of which would be through HIF with £5 million from Council forward funding. The HIF bid for Cullompton infrastructure had the support of Cullompton Town Council, Cullompton Neighbourhood Plan Group, Devon County Council, the Local Enterprise Partnership and Neil Parish MP.

- 2.2 Devon County Council and Highways England have raised concerns regarding the capacity of Junction 28 for the M5 and its ability to accommodate additional traffic movements arising from planned developments. Whilst a longer term solution is planned comprising a strategic motorway junction improvement, the delivery of a town centre relief road for Cullompton will more quickly increase capacity at the motorway junction as a first phase of wider improvements. The relief road will facilitate more immediate development proposals to come forward comprising 2,000 homes planned for within the adopted Local Plan and Local Plan Review including a first release of approximately 500 dwellings east of Cullompton which will form part of the Garden Village.
- 2.3 The delivery of the town centre relief road has also been a long held aspiration to reduce traffic flows through the town centre. Cullompton town centre is a designated Air Quality Management Area. The adoption and implementation of an Air Quality Action Plan (where an authority has designated one or more Air Quality Management Areas) is a statutory requirement under Part IV of the Environment Act 1995 for Local Air Quality Management (known as the LAQM regime). Under the regime, Local Authorities have a duty to pursue measures which are designed to improve air quality. The Council's Air Quality Action Plan includes the delivery of a Cullompton town centre relief road as an air quality mitigation measure.
- 2.4 The relief road will reduce traffic through Cullompton town centre, resulting in environmental improvement. The town's Conservation Area is included in the Historic England 'Heritage at Risk' Register where its condition is assessed as being very bad and deteriorating. The Cullompton Heritage Action Zone scheme depends upon the delivery of the relief road to implement the full range of proposals and Historic England has clearly indicated the importance of addressing traffic levels in the town centre via the road and it is a pre-requisite to investment in the heritage and town centre environment of Cullompton. The Council has also commenced a masterplanning exercise for the regeneration of the town centre.
- 2.5 At the Cabinet meeting of 31<sup>st</sup> August 2017 a decision was made to give the Cullompton bid highest priority out of Mid Devon's two HIF schemes.
- 2.6 The project has now progressed to the stage of planning application submission. At the time of writing this report the planning application is yet to be determined.

### **3.0 BACKGROUND - GRANT FUNDING AGREEMENT WITH HOMES ENGLAND**

3.1 A grant funding agreement with Homes England for the Cullompton scheme was entered into on 4<sup>th</sup> December 2019. A separate agreement has also been entered into with Devon County Council to deliver the infrastructure in question.

3.2 The report to Scrutiny Committee on 20<sup>th</sup> July 2020 included a summary of the structure and content of the HIF grant funding agreements which it is not proposed to repeat here, save for the provisions of most relevance to this report which focusses on the recent planning appeal decision. Relevant content includes:

- The Local Authority agrees to a series of warranties and representations and will be the accountable body for these projects. Of note is the requirement for the Local Authority to recover the HIF grant amount. The mechanism for this is via S106 agreements (planning obligations) with the developers of the housing to be unlocked by the projects. These will need to be negotiated at the time planning permission is granted. Failure to secure an agreement would lead to a shortfall in recovery. The purpose of recovery is to recycle the funding into the delivery of further housing. Any prospect of under recovery would be a matter for discussion with Homes England and there would be a need to show how recovery can be maximised or further housing delivered. The Council has been clear that whilst full recovery will be sought it is likely to be difficult to achieve.
- Recovered HIF money may be retained by the Local Authority and recycled so it is used for further housing delivery, details of which require agreement in advance.
- Clawback on default provisions are included to safeguard the position of Homes England, as is the ability to require repayment or recover funds if required under state aid provisions.

### **4.0 BACKGROUND - PROJECT FUNDING AND CASH FLOW**

4.1 For the Cullompton scheme, total project cost has been estimated to be £15 million, £10 million of which will be forward funded by Homes England via the HIF programme. The Council will seek to fund both the £5 million shortfall and locally recover HIF funding through S106 agreements as part of development planning applications. However, the timescale within which S106 payments would be expected lags behind the need to deliver the road scheme quickly to meet Homes England requirements. Accordingly there is a need for the Council to forward fund (cash flow) the £5 million shortfall until S106 funds are received. This has been included in the Council's capital programme for 2020/21 and the medium term financial plan capital programme to 2023/24. It is expected that S106 funds will be received during the next 12 year period, aligning with the Local Plan Review's plan period which goes up to 2033.

- 4.2 The housing trajectory within the adopted Local Plan Review indicates an anticipated timescale for housing coming forward on the North West Cullompton (CU1) and East Cullompton (CU7) allocations. A third site is Colebrook (allocation CU21). Applications from these sites would be expected to make financial contributions towards the relief road. For the Colebrook site, a planning application for 105 homes was recently allowed at appeal. This report considers this appeal decision and any implications arising from it in more detail.

Site	Policy	20/21	21/22	22/23	23/24	24/25	25/26	26/27	27/28	28/29	29/30	30/31	31/32	32/33	TOTAL
NW Cullompton	CU1	49	100	100	150	150	176	100	100	100	100	100	100	25	1350
East Cullompton	CU7				50	125	175	150							500
Colebrook	CU21	12	25	25	38										100

Note: that only the first 500 homes at East Cullompton have been included as these will be unlocked by the relief road. The remainder of homes at East Cullompton will require a further, more substantial motorway junction upgrade.

- 4.3 The drawdown tranches for the £10 million HIF money for this scheme are programmed by quarter within each financial year. To date claims made under this project total £340,800.40. For each financial year, the HIF funding is programmed to be split as follows:

Period	Funding
19/20	£650,000 (first tranche)
20/21	£1,827,500
21/22	£2,807,046
22/23	£4,715,454

- 4.4 The agreement specifies initial payments that are termed first tranche or early release funding which are for specified purposes such as planning and design fees. Initial claims for this funding or part of this funding were required to have been made by a milestone date in March 2020.

## 5.0 PLANNING APPLICATION 19/00118/MOUT AND APPEAL DECISION

- 5.1 Planning application 19/00118/MOUT sought outline permission for the erection of up to 105 dwellings, associated landscaping, public open space and allotments together with vehicle and pedestrian access from Siskin Chase and pedestrian access from Colebrooke Lane on the now allocated CU7 Colebrook site in Cullompton. For planning application purposes, the site is also known as land west of Siskin Chase. An appeal against non determination was lodged. The Planning Inspector granted planning permission on 6<sup>th</sup> July 2020.
- 5.2 As part of his considerations, the appeal Inspector assessed the content of two mutually exclusive unilateral undertakings submitted by the appellant

under the provisions of section 106 of the Town and Country Planning Act 1990. These included:

- Unilateral undertaking 1 (UU1): affordable housing up to 20%, the transfer of an area of land to facilitate a possible future link road to the north of the site, the submission of a Travel Plan; financial contributions towards the cost of public open space and £787,500 (£7,500 per plot) towards the town centre relief road.
- Unilateral undertaking 2 (UU2): affordable housing up to 35%; the transfer of an area of land to facilitate a possible future link road to the north of the site the submission of a Travel Plan and; financial contributions towards the cost of educational infrastructure, improvements to air quality and public open space

Parts of both unilateral undertakings were in dispute between this Council and the appellant.

5.3 A Statement of Common Ground (SCG), agreed between the appellant and Devon County Council as the Highway Authority (HA), has been submitted. Amongst other things, the appellant and the HA agreed that: the development impacts could be accommodated on the surrounding highway network without any significant impacts on the network (in terms of capacity and congestion), or on highway safety with no off-site highway works required and there would be no unacceptable impact on road safety or any severe residual cumulative impact on the highway network.

5.4 In respect of the financial contribution towards the town centre relief road, the Inspector commented as follows:

*'36. As noted within the LPR (IR) and the recommended modifications to policy CU21, as well as the SCG with the HA, the development of the appeal site is no longer dependent on the completion of the Cullompton Town Centre Relief Road. The contribution of £7,500 per dwelling in UU1 towards the cost of this road is not therefore necessary for the purpose of making the appeal scheme acceptable in planning terms. This obligation does not satisfy the tests set out within Regulation 122(2) of the Community Infrastructure Levy Regulations 2010 and paragraph 56 of the Frame work. I cannot therefore take it into account in determining the appeal.*

*37. The Council has informed me that in addition to highway safety and congestion issues, financial contributions towards the cost of the Cullompton Town Centre Relief Road would be necessary to mitigate poor air quality within the AQMA. Be that it may, this is a separate issue to funding the construction of the road and an Air Quality Contribution forms part of UU2 which I shall address below.*

*43. The Air Quality Contribution in UU2 amounts to £40,169. (There is separate provision for electricity cabling for electric vehicle charging.) This has been calculated based on methodology provided by Defra's 'Air quality cost guidance' and 'Air quality damage cost appraisal toolkit' with deductions/dwelling based upon the costs of cabling to enable the future*

*installation of electric vehicle charging points and a Travel Plan. This would be necessary to mitigate the risk of a deterioration in air quality within the AQMA. Whilst it would be substantially less than the figure sought by the Council it would be fairly and reasonably related in scale and kind to the proposed development. It (and the provision for electric cabling) satisfies the tests set out within Regulation 122(2) of the Community Infrastructure Levy Regulations 2010 and paragraph 56 of the Framework. I have therefore take it into account.'*

5.5 A copy of the Inspector's decision letter allowing the appeal is at **Appendix 1** to this report.

## **6.0 ASSESSMENT OF THE POTENTIAL IMPLICATIONS OF THIS APPEAL DECISION ON FUTURE S106 NEGOTIATIONS TO SECURE FINANCIAL CONTRIBUTION TOWARDS THE CULLOMPTON TOWN CENTRE RELIEF ROAD**

6.1 During the consideration of Scrutiny Committee of the report on the Council's HIF projects, the appeal decision referred to above was raised and a report to Audit Committee requested to considered the implications (if any) of the appeal decision upon the ability of the Council to undertake successful future negotiations of developer financial contributions via S106 agreements towards the Cullompton town centre relief road and hence the recovery of HIF monies and Council forward funding.

6.2 This assessment is contained within **Appendix 2** to this report. Due to the subject matter of this appendix, namely assessment of whether there are any consequences for the Council's future approach to negotiation with developers to achieve funding for the relief road, the relationship that this has through the HIF agreement and part forward funding role of the Council with the Council's financial interest, this appendix is presented as a Part 2 item as it is considered to be exempt under paragraph(s) 3 of Part 1 of Schedule 12A the Local Government Act 1972 due to it being information relating to the financial or business affairs of any particular person (or authority holding that information).

## **7.0 CONCLUSIONS**

7.1 The recovery of the HIF funds and this Council's forward funding element is intended to be from development via S106 agreements to be negotiated through the planning process. The recent appeal decision for land west of Siskin Chase considered a proposed financial contribution towards the town centre relief road. The consequences (if any) of this appeal decision upon future negotiations with applicants to secure financial contributions towards the town centre relief road are set out in **Appendix 2**.

<b>Contact for any more information</b>	<p>Jenny Clifford  Head of Planning, Economy and Regeneration  <a href="mailto:jclifford@middevon.gov.uk">jclifford@middevon.gov.uk</a></p> <p>Kathryn Tebbey  Head of Legal (Monitoring Officer)  <a href="mailto:ktebbey@middevon.gov.uk">ktebbey@middevon.gov.uk</a></p>
<b>Background Papers</b>	<p>Cabinet November and December 2014;  Council January 2015;  Council 27<sup>th</sup> April 2016;  Cabinet 15<sup>th</sup> September 2016;  Council 22<sup>nd</sup> September 2016;  Cabinet 21<sup>st</sup> November 2016  Council 1<sup>st</sup> December 2016  Cabinet 31<sup>st</sup> August 2017  Cabinet 23<sup>rd</sup> May 2018  Cabinet 30<sup>th</sup> August 2018  Cabinet 31<sup>st</sup> January 2019  Cabinet 30<sup>th</sup> May 2019  Scrutiny Committee 20<sup>th</sup> July 2020</p> <p>MHCLG  <a href="https://www.gov.uk/government/publications/housing-infrastructure-fund">https://www.gov.uk/government/publications/housing-infrastructure-fund</a></p>
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