

CABINET
4TH OCTOBER 2022

TIVERTON HIF/A361 JUNCTION

Cabinet Member(s): Cllr Richard Chesterton, Cabinet Member for Planning and Economic Regeneration
Responsible Officer: Richard Marsh, Director of Place.

Reason for Report and Recommendations:

To inform members of the latest position regarding the Tiverton HIF/A361 junction scheme and to seek decisions regarding next steps.

RECOMMENDATIONS FOR CABINET:

- i) That Cabinet instructs officers to pause progression and delivery of the next phase (phase 2) of the A361 junction owing to cost increases which make the project unaffordable at this time.**
- ii) That Cabinet instructs officers to continue to engage with Homes England with a view to identifying alternative options to utilise the HIF funding in order to support the delivery of other aspects of the Tiverton EUE scheme and, if alternative options are identified, to progress these to a stage where a viable proposition can be brought back for consideration by Cabinet.**

Financial Implications:

In 2019, Mid Devon District Council (MDDC) entered into an Agreement with Homes England, formally securing £8.2m of Housing Infrastructure Fund (HIF) grant money to support delivery of a new junction to the A361. This junction further improving accessibility to Tiverton, but also supporting the delivery of the significant housing development known as Tiverton Eastern Urban Extension (EUE). MDDC committed to the achievement of various milestones and outputs as part of the HIF agreement.

Since that time, MDDC and DCC (Devon County Council) have worked closely with Homes England to progress delivery of the scheme and HIF funding has been expended progressing the scheme. The funding spent or committed to date totals £552k, although MDDC benefits from indemnities from clawback provisions meaning that the money at risk from clawback by Homes England totals £234k.

DCC are the Council's delivery partner for the HIF scheme and the County Council is entitled to recover any project costs which it has incurred but not already received payment for.

The likelihood of clawback by Homes England is deemed to be quite low owing to the extensive effort that MDDC and DCC have committed to delivering the scheme, but the risk does remain.

A decision to pause the progression and delivery of Phase 2 of the A361 scheme (as set out within the recommendations) will mean that, unless a substitute project can be found which meets Homes England criteria, the Council will not be able to draw further HIF funding to support the Tiverton A361/EUE project. Although this does not have a direct impact upon Council financing – it is relevant in that it means that funding to support delivery of phase 2 of the works would have to be identified at a future date, with potential associated implications for future wider Council financing. If the funding can be re-purposed and approval secured for this, some minor re-profiling of spend may be required.

No other financial implications are anticipated at this time.

Budget and Policy Framework:

The scheme has been supported by £8.2 million of Homes England Housing Infrastructure Fund (HIF) grant funding as referred to above. There are currently no Mid Devon District capital funds budgeted for this project.

This infrastructure scheme is a strategic project, supported through policy and benefitting from planning permission. Delivery of the junction supports the delivery of the Tiverton EUE development site – a key scheme identified within the adopted Local Plan to deliver new homes and meet identified housing need.

Construction of the first of two phases of the new junction off of the A361 to serve the Tiverton EUE development has been completed, with the first phase providing west-bound slip roads. Since then, the developers of the first phases of the EUE development (Redrow) have been working to deliver the link road which will connect the new junction to Blundell's road. Completion of the linking road has been delayed, but opening of the link road is currently expected in spring 2023.

Consideration has been given as to the scope for the Council to seek to borrow (via PWLB) to address the funding shortfall and deliver the works, however the scale of the funding gap means that the borrowing would be significant, especially in the current financial and economic climate. Borrowing to fund the 'gap' would add significant further financial pressures to the Council at a time of increasing economic and financial uncertainty and pressures and this approach is therefore not one which is considered prudent, and is not recommended.

Legal Implications:

There is a legal agreement in place with Homes England relating to the HIF funding and the Council is the accountable body for the projects. The grant funding agreement was signed on 29th November 2019. A deed of variation to the agreement was signed on 21st June 2021 and it updated key dates and the funding availability period in line with the project programme.

The HIF Agreement places the Council under a best endeavours obligation to realise the delivery of up to 1000 new homes (850 market/150 affordable) and to seek to recoup the grant funding deployed to deliver the scheme through a S106 mechanism. The Council is then under a further obligation to seek to reinvest this funding in supporting the delivery of other housing delivery projects within the district.

The Agreement contains an agreed set of key milestone/completion dates – including completion of the project by September 2023. This date has been noted by the parties and it was agreed to keep this date under review, pending progress on interim milestones.

As set out above, the agreement includes provisions which allow Homes England to seek repayment of the grant monies expended – should it chose to. Although this places risk upon the Council, the risk of clawback is not deemed to be high as MDDC is in close liaison with Homes England on matters relating to the project and has acted in good faith/reasonably at all times with clear intent to deliver the project.

Again, it should be noted that the most recent works (works to relocate telecoms equipment and clear vegetation) also benefitted from an indemnity against claw-back from Homes England. This therefore removes the risk of claw-back of this element of cost.

Should Cabinet chose to approve the recommendations contained within this report, further discussions with Homes England will follow. The conditions set out within the existing agreement stand, and no material impacts to MDDC are envisaged as a consequence of approval of the recommendation – accepting those set out, above.

Should it prove possible to identify an alternative mechanism through which to utilise the balance of the HIF funding, further revisions to the funding agreement may be required and changes to the agreement will need to be negotiated between the parties once the situation is fully understood. No approval is sought through this report for any variations to the existing agreement.

Risk Assessment:

The Council does not currently have sufficient funding to enable the delivery of phase 2 of the A361 scheme within the required HIF timescale (completion by March 2024, latest) – either in accordance with the original plans, or based upon a reduced scheme. It does not appear likely that further grant funding will be forthcoming to support delivery. Borrowing from PWLB to fund the ‘gap’ would place an additional financial burden on the Council at a time of financial and economic pressures and is not a solution that is recommended. It is in this context that the recommendations are set before Cabinet. This approach is deemed to avoid exposing the Council to undue risk – either as a consequence of additional borrowing at a time of financial pressures, or as a consequence of committing to delivery of a scheme when a full funding package is not secured. Beyond the risk of clawback of an element of the HIF funding, no direct risk is identified as a consequence of the recommendations.

Clearly, an aspect of reputational risk does exist should the Council elect not to proceed with the works at this time – but this risk is deemed to be lower than progressing a scheme which is not fully funded, which the Council has to borrow heavily to fund when there is not an imperative for immediate delivery with potential implications for other council borrowing/schemes, or which is so heavily reduced in scale and quality that it fails to deliver key objectives.

As set out elsewhere within this report, the intention remains to deliver the phase 2 scheme and this decision is only seeking to pause delivery at this time owing to a lack of available funding. MDDC is not in a unique position in seeking to delay

delivery of this scheme in light of increasing construction costs – with many other schemes also being delayed, reduced or cancelled in light of insufficient funding.

Equality Impact Assessment:

This report recommends pausing a significant infrastructure project within the district, however no direct impacts are expected upon people/groups with protected characteristics.

Relationship to Corporate Plan:

This infrastructure project is considered to be important to enable development identified in the Local Plan to come forward and make a valuable contribution to delivering the priorities of the Corporate Plan 2020 to 2024; Economy, Homes, Community and Environment.

Pausing delivery of the scheme at this time does delay delivery of the project, but the intention remains to deliver the project and deliver key objectives as established within the corporate plan.

Impact on Climate Change:

Although this report recommends pausing delivery of phase 2 of the A361 scheme, the scheme is important to support the delivery of development as foreseen within the Local Plan. The Local Plan providing for sustainable development within the district up to 2033, as well as providing policies for the protection and enhancement of the natural and built environments.

Pausing delivery of this scheme may accrue Carbon benefits (directly and indirectly), although this is not considered to be a significant issue in the context of this report and some off-set of this benefit may result from some increased length of future journeys versus a situation where the new slip-roads are constructed.

1.0 INTRODUCTION/BACKGROUND

1.1 A report was brought before Cabinet in July 2022 in relation to the Tiverton HIF project. The report noted that a competitive tendering exercise, run by Devon County Council (DCC) on behalf of Mid Devon District Council (MDDC), had revealed that forecast construction costs for delivery of the 2nd phase of the new A361 junction scheme significantly exceeded the available budget.

1.2 In light of this, Cabinet approved two recommendations;

1. That the current tender process (being run by Devon County Council on behalf of MDDC) be stopped and that tenderers be notified that, owing to forecast construction costs exceeding the available budget, the Council will not be seeking to let a contract at this time. And;
2. That Cabinet instruct officers to continue to investigate additional funding opportunities and scope for project value-engineering,

working with key project partners including Devon County Council and Homes England, and that a further report be brought back to Cabinet as soon as possible.

- 1.3 Following on from the Cabinet approval, tenderers were notified that the Council(s) would not be letting a contract at that time.
- 1.4 Further work subsequently continued to consider whether additional funding could be secured to support the project and whether cost savings measures could be identified in order to reduce the cost of the scheme – making it both affordable and deliverable.
- 1.5 In terms of reducing the cost of the scheme; opportunities were identified which offered opportunities to reduce the cost of the scheme without negatively affecting the core objectives of the scheme. Specifically, these focused on the potential for the removal of one of the two new slip roads (the east/south bound on-slip) from the next phase of works (deferring this element for later delivery) and focused upon an alternative construction methodology which, subject to validation of it being a viable construction method, would reduce the need to import materials to address ground stability issues, thereby reducing construction cost estimates.
- 1.6 Initial work suggested that, although these two measures would not completely address the funding ‘gap’, they could go a significant way towards addressing it – leaving a more modest and manageable funding gap to be addressed/dealt with.
Discussions between MDDC and DCC confirmed a willingness from both Councils to consider further modest financial contributions in order to address this remaining gap, enabling delivery of the scheme.
- 1.7 It should be noted that concurrent work revealed the delivery programme to be challenging (noting the HIF spend deadline of March 2024) and that continued programme slippage represented a significant risk to the overall project.
- 1.8 As a consequence of this positive progress, it was agreed with Homes England that further technical work, including geo-technical analysis, would follow and Homes England agreed to consider the further funding of these works. The geo-technical works being required to validate the scope to utilise the alternative construction methodology, thereby generating the financial saving.
- 1.9 However, before this further technical work could progress, DCC flagged concern relating to further construction cost increases (inflationary pressures) which were rapidly eroding the scope for cost savings to be made on the scheme. DCC also confirmed that, owing to other organisational financial pressures, DCC was no longer in a position to be able to offer a further financial contribution to support delivery of the scheme.

- 1.10 As a consequence of both of these factors, the financial 'gap' (the gap between the available funding and scheme cost) for MDDC has again increased – the cost of the scheme having increased again through inflationary pressures, and the potential available funding having decreased. This puts MDDC back to a position whereby, should MDDC wish to progress the scheme, MDDC would need to find the whole 'gap' amount – this figure being likely to exceed £3m.
- 1.11 Homes England are appraised of this position and have again confirmed that no further HIF/Homes England funding is available to support delivery of this project at this time.
- 1.12 In light of this, consideration was given to what further options exist to support delivery of the scheme – i.e. through further scope reduction. Conversations have confirmed that, in the opinion of the project team, the project has reached the limit of reasonable scope reductions and that further reductions would undermine the purpose and value of the scheme. There are therefore no further practical measures to reduce scope, and therefore cost.
- 1.13 In light of this position, officers are of the professional opinion that it is now necessary to pause progression and delivery of the scheme (phase 2 of the A361 junction) owing to the fact that the Council does not have the funding to support delivery of the scheme at this time. The intention to deliver the scheme remains, and alternative funding sources can be identified/sought in the future in order to allow the future delivery of the scheme.
- 1.14 In terms of the practical short-term implications of this decision; no negative impact is foreseen relating to the delivery of new homes within the Tiverton EUE development, there being several years' worth of housing supply existing. This decision does not therefore have implications for the Council in terms of housing supply/housing trajectory, or the Local Plan. In the medium/long term, the intention remains to complete the scheme.
- 1.15 The recommendation to pause scheme delivery is not made lightly, and officers are aware that members and residents may have concerns around the recommendation, but there appears to be no viable solution to support scheme delivery in the immediate term. It should also be noted that MDDC is not the only council currently affected by spiralling construction costs – especially on infrastructure schemes – and many other projects are facing similar challenges, with many other schemes being delayed, mothballed or cancelled. Such news is now widely reported in local and regional press on a daily/weekly basis.
- 1.16 For information: officers have considered the revenue implications of seeking to borrow (from PWLB) to support delivery of the scheme by funding the 'gap', but the annual repayment figure (based on borrowing £3m over 25 years) equates to over £192,000. This would place a significant additional burden upon Council finances at a time of increased/increasing cost pressures and is therefore not felt to be

something which could be advocated by officers. This is reinforced by an awareness of current inflationary pressures which could further drive construction costs – presenting a significant risk that the funding gap could widen further.

- 1.17 As per the second recommendation set out for member consideration: officers seek approval to continue to work with Homes England (and DCC) to consider the scope to utilise the HIF funding to deliver alternative projects, closely linked to the Tiverton EUE scheme, which would unlock housing and which would support the delivery of wider place-making objectives.
- 1.18 It should be noted that Homes England do have specific requirements relating to the utilisation of HIF funding, and it will be necessary for alternative schemes to satisfy these key requirements in order to allow MDDC to deploy the funding on alternative projects/scheme components. However, officers do remain keen to explore options to seek to utilise the funding – the opportunity then existing to again seek to recoup the funding deployed (through S106 or other mechanisms) and re-circulate it to support the delivery of other key schemes/projects or to fund/part fund the delivery of phase 2 of the A361 junction at a point in time in the future.
- 1.19 If an alternative use of the funding cannot be identified which meets the requirements of Homes England, then the authority will not be able to draw down and utilise the remaining HIF funding and it will be necessary to formally communicate with Homes England to confirm that we are unable to utilise the funding in the manner originally foreseen owing to construction cost pressures and a lack of viable alternative options.
- 1.20 It should be noted that, as set out within previous reports, if the Council does not deliver (complete) the HIF funded scheme, there is the risk of Homes England seeking to clawback expended funding. To date, MDDC have utilised (spent/committed) £552k of HIF funding. However, MDDC also benefits from cost indemnities from Homes England in relation to some elements of work, meaning that MDDC's cost risk-exposure only totals £234k.
- 1.21 Although discussions with Homes England have not focused upon the possibility of Homes England seeking to recoup this funding – owing to the fact that it is hoped that conversations can continue focused on opportunities to re-purpose the funding – it is hoped that Homes England will not seek to recoup the element of funding that they are entitled to. This being virtue of the fact that MDDC officers have done everything within their power to keep Homes England informed of scheme progress, have worked extensively to identify solutions to deliver the scheme, and intend to continue to actively explore alternatives to ensure effective utilisation of the HIF funding.
- 1.22 Finally, it is again stressed that the decision to pause delivery of phase 2 of the A361 junction does not represent a departure from the

Council's intention to deliver the Tiverton EUE scheme and officers will continue to work to progress the scheme.

2.0 CONCLUSION

- 2.1 Further to the July Cabinet decision, officers have worked hard to identify additional funding and/or reduce the scope of phase 2 of the A361 HIF scheme to ensure the project can be delivered within budget and within necessary timescales, whilst also realising the original objectives of the project.
- 2.2 Despite the best effort of officers, it has not been possible to identify a scheme which is fully funded and therefore deliverable within the required timescales.
- 2.3 In order to avoid further abortive cost and time, is it therefore recommended that the project be formally paused and that officers seek alternative ways to utilise the HIF funding.

Contact for more Information: Richard Marsh, Director of Place

Circulation of the Report: Cllr Richard Chesterton, Cabinet, Leadership Team

Background Papers:

1. Tiverton HIF/A361 Junction Cabinet report – 12th July 2022.