

**SURREY COUNTY COUNCIL**

**CABINET**

**DATE: 29 SEPTEMBER 2020**

**REPORT OF: MR COLIN KEMP, DEPUTY LEADER**

**LEAD OFFICER: KATIE STEWART EXECUTIVE DIRECTOR FOR ENVIRONMENT, TRANSPORT AND INFRASTRUCTURE**

**SUBJECT: HOUSING INFRASTRUCTURE FUND FORWARD FUNDING – FUNDING ALLOCATION OF £41.8 MILLION TO THE A320 NORTH OF WOKING**



13

#### **SUMMARY OF ISSUE**

The Housing Infrastructure Fund Forward Funding is a £5.5 billion government capital grant programme launched in summer 2017 to help to deliver up to 300,000 new homes in England in response to the national shortage of good quality accessible housing. Funding is awarded to local authorities on a highly competitive basis, providing grant funding for new infrastructure that will unlock the supply of new homes in the areas of greatest housing demand.

Following a comprehensive and detailed due diligence process by Government, the Ministry of Housing, Communities & Local Government (MHCLG) have confirmed on 12 March 2020 that Surrey County Council has been awarded £41.8 million for its A320 North of Woking Housing Infrastructure Fund Forward Funding scheme. The award letter is attached to (Part 2, Annex 1). Following further work on the outstanding issues identified when this project was last considered by Cabinet on 23<sup>rd</sup> June, Cabinet are requested to agree to the signing of the GDA and move the scheme from pipeline to capital budget the cost of which will be fully rechargeable to the Scheme Funding once released.

#### **RECOMMENDATIONS:**

It is recommended that:

1. Surrey County Council (SCC) confirms acceptance of the funding award of £41.8 million for the A320 North of Woking Housing Infrastructure Fund (HIF) Forward Funding scheme allocated by the Ministry of Housing, Communities & Local Government (MHCLG), by agreeing to proceed to sign the relevant Homes England Grant Determination Agreement (GDA);
2. Either prior to or concurrently with signing the GDA agreement, SCC enters into a side agreement / Flow Down contract with Runnymede Borough Council (RBC) regarding any GDA conditions which relate not to the delivery of the infrastructure but instead to those elements particularly associated with housing, alongside a cost sharing arrangement;
3. The scheme be moved from capital pipeline to capital budget immediately post-GDA signature but prior to the targeted receipt date for the HIF allocation of October 2020 in order to allow for the project to progress in line with the target timescale for completion;

4. The Council's capital programme make provision for a contingency of £2m to support any project cost overruns should they arise and that this be managed as detailed in this report at paragraph 12;
5. Any further decisions on this project relating to the forward funding conditions be delegated to the Executive Director Environment, Transport and Infrastructure and the Executive Director of Resources in consultation with the relevant Cabinet Member;
6. Necessary authority and permission be given to officers to proceed to facilitate land purchase through Compulsory Purchase in the event that any initial attempts through direct negotiation prove to be unsuccessful, subject to the signing of the GDA by SCC.

#### **REASONS FOR RECOMMENDATIONS:**

Reasons for recommendations are as follows:

- SCC's acceptance of the grant funding will facilitate the delivery of the road infrastructure to support the additional housing identified in RBC's Local Plan.
- The proposed flow-down/side agreement will ensure that SCC and RBC are held to account for those elements of the project and related outcomes for which they are responsible.
- Moving the scheme funding from pipeline to capital budget will release funds for further scheme development and thereby enable SCC to commence work on the scheme as early as possible considering the limited time now available within which to deliver the full improvements. The cost of expenditure incurred pre-signature will be fully rechargeable to the Scheme once funding is released.
- The additional contingency provided by SCC will ensure that should any cost overruns are able to be met, and that these are met in a way that is shared with RBC in accordance with the methodology set out in this report.
- Delegation on decisions relating to the forward funding conditions is sought to enable timely decisions to be taken on the operational aspects of delivering the scheme.
- Beyond Cabinet's previous resolution that authority be given to officers to commence early discussions with landowners with respect to acquisition by negotiation, Cabinet is also now asked to provide authority to commence land acquisition with through compulsory purchase where such negotiations are clearly failing. The provision of such authority will allow the CPO process to progress in a timely manner should the need arise particularly where the designed future alignment requires land that cannot be acquired by negotiation.

#### **BACKGROUND**

1. The HIF project will:
  - a. Facilitate the development of c. 3,000 homes across the identified sites, by 2030. These sites are as follows:

- i. Hanworth Lane sites [ 2 sites ]
  - ii. Longcross Garden Village
  - iii. Chertsey Bittams sites [ 5 sites ]
  - iv. Ottershaw East site
  - v. Vet Labs site
  - vi. Pyrcroft site
- b. Enable delivery of 1,188 affordable homes and thus meet the recognised housing demand by 2030;
  - c. Ensure the timely delivery of Longcross Garden Village.
  - d. Increase capacity at the identified junctions and links along the A320 corridor to address the anticipated increase in traffic volume to 2030, to provide a safe and balanced level of provision for all road users by 2024 (Part 2, Annex 3 shows the location of the Scheme)
2. At its meeting in June Cabinet considered the HIF project, and agreed to release early funding for the design of the project in order to enable SCC to commence work on the scheme as early as possible; however, Cabinet also identified that there were a number of outstanding issues that needed to be resolved before the Grant Determination Agreement (GDA) could be signed with MHCLG; these issues were specifically:
- a. A concern about the timescale to complete: The March 2024 deadline for spending of HIF monies was identified as a potential risk to the project, given the scale of the works required.
  - b. A concern about the costs to complete the project: It was identified in the June Cabinet report that Highways England had identified a requirement for the delivery of improvements to J11 on the M25 as a result of impacts arising from the project. The concern flagged by Cabinet was that the HIF monies did not include funding explicitly given for these works, and that therefore, the project could end up costing more than the total HIF funding received for the scheme.
  - c. SCC's exposure regarding potential failure of the housing delivery: As SCC is the accountable body for the HIF project and money, Cabinet identified a risk that SCC could potentially also be held to account for the delivery of the housing outputs agreed as part of the project when RBC is the local planning authority and therefore the responsible body for such outputs.
3. This subsequent report seeks to provide assurance to Cabinet as to how the above issues are being mitigated to enable a decision to sign the GDA with MHCLG and to enable the project to be progressed.

<b>GRANT DETERMINATION AGREEMENT: KEY ISSUES</b>
--

**Timescale to complete**

4. The need for the scheme to effectively be delivered within the HIF timescale is recognised to be a major source of project risk. The deadline for spending of HIF funding is March 2024. Whilst this timescale was deemed sufficient for delivery of the scheme when the original bid was submitted in 2018, the window available within which to deliver the scheme has been constrained by the fact that MHCLG was one year late in confirming its award of the funding for the project – whereas the decision was expected in 2019, it was

not until 2020 that SCC was advised of the positive result. As a result, the County Council will now need to effectively deliver the necessary improvements within a much-constrained delivery programme and requiring initial design, land and associated survey work to commence with the minimum of delay.

5. Whilst this timetable is already challenging, there are two further challenges that officers have had to factor into the project timetable:
  - a. the requirement that Highways England has imposed on SCC to deliver an enhanced junction at Junction 11 of the M25. This requirement arose from Highways England's assertion that the SCC model did not adequately cater for the additional traffic resultant from the A320 scheme, particularly at peak times, resulting in their requirement that additional lanes would be required on the junction 11 slip roads; and
  - b. the project is further complicated by the need to coordinate the delivery of the A320 project with the SMART motorway works by Highways England at Junctions 10 to 16 that will be taking place from Summer 2021 to late 2023. These works were only announced and confirmed in June 2020 and hence, there is work currently now underway with Highways England and Homes England to agree how best to coordinate and therefore mitigate the risk to the A320 HIF project from these works.
6. Whilst these developments add risk to meeting the proposed deadline of March 2024, there is one development since last reporting to Cabinet that reduces the original timetable for delivery of the project – and that is the result of the Environmental Impact Assessment (EIA) Screening Opinion which has concluded that the proposed scheme of works does not constitute 'EIA development.' This means that there are no EIA grounds for revoking the County Council's permitted development rights under Class A of Part 9 of the Town & Country Planning (General Permitted Development) Order 2015 (as amended)–This in turn means that the planning process will require fewer stages and therefore less time to complete – thereby offering some mitigation to the overall timescale for delivery.
7. Nonetheless, the net impact of the above factors means that the timetable to complete the project remains challenging, and to this end, several actions have been taken by officers:
  - a. The project programme is being streamlined as much as possible, in particular by breaking the construction work into a number of smaller, manageable works contracts which will run concurrently in order to ensure their completion by the prescribed end stop date.
  - b. Given that the Junction 11 works required by Highways England of the project will require at least 14 months to construct, it has been agreed that these works will be run concurrently with Highways England's SMART motorways works. Whilst this option was not SCC's preferred option, it is the one that has been arrived at following negotiation with Highways England.
  - c. Officers are engaging with Homes England and Highways England to seek assurances that any delays caused by the Highways England SMART motorways project are not a cause for penalty if such delays cause the A320 project to run past the March 2024 deadline.
8. Even with these mitigations, however, there remain risks to the timetable. The most significant risk is the potential for conflicts and issues between the A320 project and the Highways England works, as well as the challenge that concurrent works on the Strategic

Road Network (SRN) in the same area will cause to residents and motorists travelling through this area for what is likely to be 27 months.

9. To this end, SCC is continuing to engage in further discussions with Highways England to establish the kind of joint working that will be critical to ensuring a successful coordination of these projects, and therefore the best opportunity for SCC to deliver the A320 HIF project to timescale.

#### **Cost to complete and potential for cost over-runs**

10. Concerns have been raised with Homes England with regard to SCC's exposure to a potential scheme cost overrun due to the additional works to J11 that Highways England now require, beyond the £41.8m currently available. The requirement for additional works was confirmed by Highways England *subsequent* to SCC's HIF funding bid submission, and thus the cost of this was not included for in the original amount requested of Government.
11. The construction of this enhanced scheme therefore has no HIF funding available to support it, the cost of the additional works currently estimated to be in the region of £5m. Homes England are not prepared to extend the size of the grant to cover this unplanned increase stating their 'hands are tied' with Treasury, the maximum advance to SCC having already been agreed and, Highways England are not prepared to fund, citing the reason for this J11 work being solely due to Surrey's A320 HIF scheme and the additional traffic resultant from the new developments.
12. Officers have identified a number of options for covering this (or any other) unplanned additional costs arising from the delivery of the project, depending on the scale of any such overruns:
  - a. There is a fairly significant **project contingency of c.£7.9m built into the £41.8m HIF funding** for the project such that, whilst some of this amount will likely be needed elsewhere in the scheme, there is the potential that some of this contingency could be used to cover these works.
  - b. For any costs arising in the project that exceed that HIF-funded project contingency, SCC has secured agreement from Homes England that **up to £5m of project overspend can be funded from clawed-back developer contributions** from the development enabled by the project.
  - c. Beyond £5m, it has been agreed in principle with RBC that **SCC and RBC will provide £4m total capital contribution, on a 50:50 basis** (i.e. £2m from each council) to cover any additional cost overruns. This is subject to the signing of a flow-down/side agreement as detailed at paras 20 and 21.
  - d. Any further financial risk beyond this additional contingency would be borne by SCC as the accountable body for the project.
13. With respect to point 12b, it should be noted that by the very nature of the project – i.e. a forward funding of infrastructure which will unlock/support new development – it is not expected that developer contributions will be available during the delivery of the project when the money will be needed, such that there will need to be forward funding of this up to £5m overrun budget if required. This forward funding would be provided by SCC and RBC in line with the flow-down side agreement referenced in paras 20 and 21 on the basis that both councils will be repaid when developer contributions are received.

14. As the use of clawed back developer monies for cost over runs is capped at £5m by Homes England, if there are cost over-runs beyond £5m, the flow-down side agreement with RBC includes a provision to share the risk for any overspends above £5m, such that the repayment of each council's £2m initial investment would be reduced on a 50:50 basis for any cost over runs between £5m and £9m. As noted in para 12c, any cost overruns that exceed this £9m would be borne by SCC alone. Provision for a contingency of £2m from the Council's capital programme is being requested as this Council's matching investment to that of RBC as set out in recommendation 4.

### **SCC's exposure regarding potential failure of the housing delivery**

15. In relation to SCC's exposure in respect of possible failure of the intended housing delivery, SCC officers have identified a means by which this potential risk to SCC is effectively diminish. Whilst the GDA requires the grant recipient, SCC, to confirm the number of planned housing outputs anticipated with the delivery of the HIF project, officers have agreed with RBC to put in place a jointly signed legal 'side' or flow down agreement with RBC, linked to the GDA, which will encompass and effectively draw RBC into sharing responsibility with SCC for all such housing-related terms and conditions, and that RBC would be particularly responsible for those in respect of housing delivery.
16. More importantly, however, Homes England have confirmed that although it is expected that the grant recipient and relevant planning authority would put in place a plan for rectifying and attempting to recover any such failure to deliver, there is no actual penalty for such a failure particularly as the potential likelihood of such an event occurring will be beyond 2024 scheme end stop date.

### **GRANT DETERMINATION AGREEMENT**

17. Provided that Cabinet are satisfied that the issues identified at June Cabinet have been sufficiently mitigated, SCC will be required to enter into a GDA with MHCLG in order to draw down the HIF funding and to be able to proceed with the project. The GDA confirms the terms and conditions for the grant funding, including the availability period within which the funds are available to be drawn and the project end date. It defines the 'project' and the deliverables (including key milestones & outputs) to be monitored. It also includes an initial cashflow setting out costs, values, funding and outputs. The Grant Recipient, in this case SCC, is accountable for the successful delivery of the project, including conditions, claims, representations and warranties.
18. The offer of HIF funding is time-sensitive and there is always a risk of Homes England withdrawing the funding offer if the Council fails to enter the GDA in a timely manner. Should this occur, the scheme would likely not proceed and the development it aims to facilitate may be put at risk and there may be pressure to compromise on the provision of other community infrastructure and planning obligations.
19. Pinsent Masons have been appointed as legal advisors to SCC in the development of this GDA with MHCLG. They will be responsible for the preparation of the GDA and its completion, in conjunction with legal counsel for Homes England. They will also be responsible for the preparation of the legal 'flow down' agreement.
20. As set out in paragraph 15, the conditions relating to the delivery of housing units, provision of associated housing data and local plan information all of which form part of the GDA, are to be discharged directly by RBC by mechanism of a legally binding *flow-*

down agreement between SCC and RBC. This agreement will bind RBC to the general GDA obligations as well as those particularly associated with housing delivery, outputs, HIF recycling & recovery, developer contributions recovery and the like, without which such requirements and obligations being instead imposed solely on the Grant recipient.

21. Notwithstanding the contingency of c.£7.9m already contained in the HIF funding, with the likelihood of this sum being exceeded due to the probability of enhanced J11 works, the GDA and flow-down agreement will also confirm a commitment by RBC and SCC to provide additional capital funding to cover cost over-runs up to a certain amount. As set out above in paras 12 and 13, cost overruns will be managed through a project contingency of c.£7.9m built into the £41.8m HIF funding, from clawed-back developer contributions from the development enabled by the HIF project and an SCC and RBC £4m total capital contribution on a 50:50 basis (i.e. £2m from each council), with the Council's capital programme being asked to make provision for a contingency of £2m for this purpose as set out in recommendation 4.
22. Part 2, Annexes 4 and 5 provide further comment and detail in respect of the GDA.

## LAND PURCHASE

23. In order to successfully construct all elements of the proposed infrastructure additional third-party land will be required. This land will need to be taken permanently, either where SCC are looking to acquire the freehold interest e.g. the site of the enlarged carriageway; or, where instead, we do not need a freehold interest, but only a lesser interest e.g. a permanent right of way or, where the land may instead need to be taken temporarily, for a fixed period, after which the land will be returned to the owner e.g. a contractor's work site.
24. Initial attempts to purchase will be by negotiation. Where such a method proves unsuccessful SCC will instead seek to acquire the necessary land through the compulsory purchase order (CPO) process as a *remedy of last resort*. The full extent of additional third-party land required will be fully understood once the agreed design is complete.
25. It is therefore recommended that Cabinet agree to delegate the necessary authority and permission to officers to facilitate land purchase through CPO in the event that any initial attempts through direct negotiation prove to be unsuccessful, subject to the signing of the GDA by SCC.

## CONSULTATION

26. SCC will be undertaking the appropriate local consultation on the proposed highway improvements as part of the scheme delivery process, particularly during the feasibility design stage, so as to enable an early determination of the preferred design solution and needs for any additional land. The consultation may well be undertaken in conjunction with RBC.

## RISK MANAGEMENT

27. The processes for ensuring that risks are being managed effectively will be the same as that process currently used successfully elsewhere by SCC to deliver similar major highway schemes. SCC will bear all those risks associated with the delivery of this project with the exception of those directly related to the delivery of housing units, provision of housing data and associated local plan issues which, although included in the GDA

between SCC and MHCLG, are instead to be discharged by RBC through a relevant binding sub-agreement between SCC and RBC.

28. The total project risk and contingency budget is £7.97m and a commuted sum for maintenance of circa £1M representing about 19% and 2% respectively of the total scheme.
29. In respect of any cost overrun that exceeds this contingency, it has been agreed in principle that RBC and SCC will jointly sign a further agreement that will see the two authorities equally share in any cost overrun up to £4m, beyond which SCC would bear the financial risk, with the expectation of recovering up to £5m of any additional cost from future developer receipts, as set out at paras 12 to 14.
30. At present it has not been possible to negotiate an extension to the delivery timetable beyond March 2024. Whilst SCC will continue to consult and renegotiate with the MHCLG to secure an extension on the basis of the Government's own delay in decision making on the HIF funding, COVID 19 and the need to coordinate with only recently announced Highways England SMART motorway works, officers have reviewed and revised the programme to deliver the project in the timescale, albeit with minimal contingency.
31. A full overview of risks is contained at Part 2, Annex 6.

#### **FINANCIAL AND VALUE FOR MONEY IMPLICATIONS**

32. The current value of HIF funding is £41,828,129. Within this sum the total project risk and contingency budget is £7.97m. In addition, there are further anticipated costs of c. £5.0m currently identified to deliver the enhanced J11 works required by Highways England.
33. The project and the associated J11 works will be delivered in the first instance using the HIF funding provided by Homes England. The available budget includes for a fairly significant risk and contingency budget and should this not be required elsewhere in the scheme it could cover in part at least the additional cost arising from the enhanced J11 works. If, however, there are any costs associated with the project that cannot be met by the HIF funding, these will be managed using the methodology described above in para 12.
34. The Business Case has identified the Net Present Value (NPV) of the additional housing benefits, monetised using the land value uplift is £345 million compared to the do-nothing option. The assumed Gross Development Value (GDV) for the scheme is £1.74 billion.
35. The financial aspects of this project have been scrutinised in detail by Homes England bid assessment team. The costs for the project was produced by specialist infrastructure cost management consultants commissioned by RBC. The project costs were derived based on the outline design produced for the Business Case and represent the best costs estimates at that time. SCC have applied the appropriate contingency and risk allowance in the Business Case. These may change when SCC undertakes the costings on the detailed design. SCC will undertake a project cost review when the detailed design is complete.



## SECTION 151 OFFICER COMMENTARY

36. Although significant progress has been made over the last twelve months to improve the Council's financial position, the medium-term financial outlook is uncertain. The public health crisis has resulted in increased costs which are not fully funded in the current year. With uncertainty about the ongoing impact of this and no clarity on the extent to which both central and local funding sources might be affected from next year onward, our working assumption is that financial resources will continue to be constrained, as they have been for the majority of the past decade. This places an onus on the Council to continue to consider issues of financial sustainability as a priority in order to ensure stable provision of services in the medium term.
37. The A320 North of Woking was expected to be fully funded through HIF Forward Funding grant of £41.8m, including the cost of design, land purchase, construction, associated fees and future maintenance costs. The grant allocation includes a risk allowance of c.£8m in recognition of the potential for cost increases arising as the scheme progresses through design, procurement and construction phases. Since the scheme was last reported to Cabinet the requirement for additional works has become apparent, at an estimated cost of £5m.
38. There is therefore a likelihood that overall scheme costs will exceed the grant allocation of £41.8m. In mitigation, SCC and RBC have agreed to share the risk of cost increases up to £4m on a 50:50 basis, beyond which any additional cost would initially need to be met by SCC. It is expected that additional costs up to £5m will be recovered from future developer contributions arising from the scheme, although the exact value and timing of those receipts will depend on a number of factors including the health of the housing market. Recommendation 4 seeks to make provision for these additional costs within the Council's capital programme, which will need to be reviewed as the scheme progresses.
39. In the meantime, the Council continues to incur costs in advance of entering into a formal agreement with Homes England. Discussions between Highways officers and Homes England indicate that those costs can be recovered from future grant. If that is not possible, or if the scheme does not proceed, SCC could need to fund those costs (estimated at up to c.£0.73m) itself.

## LEGAL IMPLICATIONS – MONITORING OFFICER

40. Section 1 of the Localism Act 2011 provides Surrey County Council with the power to do anything an individual may do, subject to a number of limitations. This is referred to as the "general power of competence". A local authority may exercise the general power of competence for its own purpose, for a commercial purpose and/or for the benefit of others. The general power of competence allows the Surrey County Council to apply for the funding described in this report and to procure a contractor / contractors to undertake the works described.
41. Funding awarded must be spent in accordance with all legal requirements, which will include state aid, public procurement law, wider public law (including the Public Sector Equality Duty), and planning law. Surrey County Council has obligations under the overarching GDA, including the delivery of objectives within agreed timeframes.

42. Any procurement required as a result of the funding must be conducted in accordance with Surrey County Council's Constitution, including the Procurement & Contract Stranding Orders and the Public Contracts Regulations 2015.
43. Section 226(1) of the Town and Country Planning Act allows local authorities to acquire compulsorily any land in their area by compulsory purchase subject to authority from the Secretary of State. Authority to pursue a Compulsory Purchase Order must be sought by a further report to the Cabinet Member should negotiations fail.

#### **EQUALITIES AND DIVERSITY**

44. An Equality Impact Analysis [EqIA] is currently in preparation and will be developed in keeping with the emerging design. SCC is satisfied that there are currently no identifiable negative Equality implications arising from the proposals. The benefits of the delivery of necessary infrastructure to support housing in principle applies equally to all individuals including those within protected characteristic groups. Further opportunities to make improvements for those with relevant protected characteristics, including disability and age, will be taken at the detailed design stage, when appropriate design features can be incorporated, and other opportunities considered to promote inclusivity for access and transport.

#### **WHAT HAPPENS NEXT:**

46. Provided Cabinet approve the recommendations identified in this report, the following are the next steps in taking forward this project:
- a. Signing of legal agreement between SCC and the MHCLG encompassing all relevant terms and conditions of the award to be completed;
  - b. Signing of legal side / Flow Down agreement between SCC and RBC relating to all relevant terms and conditions of the award in respect of housing; and
  - c. Commencement of the reimbursement process from Homes England in respect of all *Historic expenditure* which is recoverable against the bid, incurred in its preparation prior to GDA signature.

---

#### **Contact Officer:**

Lyndon Mendes, Transport Policy Team Manager

Contact: 020 8541 9393

#### **Annexes:**

- Part 2 Report