

Wiltshire Council

Cabinet

12 July 2022

Subject: Future Chippenham

Cabinet Member: Cllr Richard Clewer – Leader of the Council and Cabinet Member for Climate Change, MCI, Economic Development, Heritage, Arts, Tourism and Health & Wellbeing

Key Decision: Key

Executive Summary

This report provides an update on the progress of the Future Chippenham programme since the Council decision in July 2021 to seek an amendment to the Grant Determination Agreement with Homes England to fund a programme to the south of Chippenham.

Proposal(s)

Cabinet is asked to:

1. Confirm their decision of 21 July 2021 to support the preferred road route and Future Chippenham programme to the south of Chippenham subject to Housing infrastructure funding (HIF) and the Local plan review.
2. Note the outcome of the recent judicial review brought by a member of the public supported by the Campaign Against Urban Sprawl south of Chippenham.
3. Agree that if HIF funding via a revised Grant Determination Agreement (GDA) with Homes England, or the Local plan review does not support the Future Chippenham programme proposals based on the 21 July 2021 decision, the Council will seek to negotiate an exit from the GDA.
4. Agree that design work on the Future Chippenham programme will be paused subject to reaching agreement on the revised GDA.
5. Agree that subject to agreeing a revised GDA the Future Chippenham programme submits its further representations to the Local plan review.
6. Agree to delegate to the Corporate Director of Resources (Deputy Chief Executive) authority to enter into a revised GDA based on the July 2021 decision and no further financial liability for the Council and a HIF availability period that minimises risk for the Council.

Reason for Proposal(s)

Following the Cabinet's decision in July 2021 to seek a revision to the GDA with Homes England to support a southern only road route and development proposals, discussions have been taking place with Homes England. During this period the Council has continued design work in good faith but at risk.

The availability period for HIF funding to be defrayed by March 2025 means that procurement of road and associated design and investigatory work needs to be commissioned now so that subject to the Local plan review the Council can proceed with the scheme.

Incurring further expense at risk without agreement to a revised GDA places unacceptable risk on the Council. Hence the report seeks authority to pause that work and seek a resolution to a revised GDA before proceeding any further with the Future Chippenham programme.

Terence Herbert
Chief Executive

Wiltshire Council

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Purpose of Report

1. The purpose of the report is to seek authority to pause design work on the Future Chippenham programme subject to achieving a revised GDA with Homes England that reflects the cabinet decision of 21 July 2021.

Relevance to the Council's Business Plan

2. The Future Chippenham Programme directly supports the Council's business plan to deliver vibrant, well connected communities.

Background

3. The cabinet agreed to seek a revision to the GDA with Homes England that would provide HIF for the Future Chippenham programme at its meeting on 21 July 2021 following the outcome of public consultation. The cabinet agreed a preferred road route for a southern section and discussions took place with Homes England on a revised GDA whilst design work continued on that revised scheme with funding for that work incurred at risk. Despite on going discussions with Homes England, agreement on a revised GDA has not been reached. If the scheme proceeds subject to the Local plan review, significant design and procurement work should commence now. However, that would expose the Council to significant financial risk.

Main Considerations for the Council

4. After taking Counsel advice and whilst it was accepted that there was no formal consultation period underway in the Local Plan review process, in May 2022 the Partnership made an additional (and amending) holding submission to the previous Future Chippenham Project Team submission. This submission was based on the cabinet decision of 21 July 2021 and on-going design work and negotiations with land owners on behalf of the Council as landowner promoting the Future Chippenham programme. These holding representations were made subject to confirmation of HIF funding and the Local plan review itself. This included draft documents relating to the masterplanning process that all landowners had collaborated on but were

subject to final agreement and a timescale based on achieving a decision on HIF funding a revised GDA.

5. Due to the scale and nature of the project, the combined landowners chose to employ the process set out in the Government's Garden Communities Toolkit: <https://www.gov.uk/guidance/garden-communities/masterplanning>. Should the Inspector overseeing the Examination-in-Public (EIP) accept Future Chippenham as the allocation, then it will almost certainly be the case that the allocating policy will require the area to be masterplanned holistically and in conjunction with proper community input. Therefore, by beginning this process at the soonest juncture, this means that delivery can commence expeditiously if the Local Plan is found sound. This will ensure a clear, established process is followed in a way that has the best chance to successfully navigate the Local Plan and development management processes and to communicate the project effectively to stakeholders.
6. The intention is that a further updated representation position will be submitted in due course subject to achieving a revised GDA and ideally at regulation 19 stage which will include, amongst other documents:
 - a) Masterplan and planning statement, explaining distribution and delivery of land uses
 - b) A Vision document - This Future Chippenham Vision Report is being developed to support the promotion of land to the south of Chippenham as a preferred location for growth in the new Wiltshire Local Plan. It captures the outcomes from site survey investigations of the physical and environmental context and represents a comprehensively agreed and updated Local Plan promotion position that advances on the previous Regulation 18 submission by the Future Chippenham Project Team.
 - c) This Vision Report aims to inform the Council's strategic decision and plan-making processes and in so doing
 - Sets out the design vision supporting Future Chippenham. identifies the land required for up to 4,050 homes and associated development to be delivered in the Local Plan Period.
 - Identifies the proposed settlement boundary to the south of Chippenham up to 2036.
 - Summarises the known environmental constraints and challenges and how these have been considered within early design work.
 - Includes the emerging alignment of the distributor road.
 - d) Draft over-arching design code to deliver excellent place shaping.
 - e) Agreed Statement of Common Ground between all landowners.
 - f) Mitigation of traffic impacts as agreed with the Local Highways Authority
 - g) Avoidance and mitigation of environmental impacts including indicative solutions to meet policy requirements on biodiversity net gain measures and sustainability.
 - h) A summary of public consultation carried out in relation to the scheme.
 - i) Technical papers showing the evidence that has informed the project (e.g. highways, landscape, sustainability, heritage, archaeology, infrastructure and so on).
 - j) Delivery strategy including phasing and infrastructure.

7. A member of the public (supported by the Campaign Against Urban Sprawl in Southern Chippenham) sought a judicial review of the 21 July 2021 cabinet decision. The claim was heard in the High Court (Cardiff Registry) on 26 May 2022. The claim raised three Grounds of Challenge and his Honour Judge Jarman QC held that the claimant had not established any of the grounds of Challenge that were made out and therefore the claim failed.
8. The claimant is currently seeking permission to appeal the Judgment in respect of one of the grounds of Challenge. The Council has opposed the granting of permission on the basis that the Judge considered all of the facts and his conclusions were ones which he was entitled to reach on the evidence before him and that the proposed appeal is no more than the Claimant's disagreement with the Judge's conclusions. The Judge has subsequently refused the claimant permission to appeal. The Claimant can renew the application for permission to appeal by lodging an application with the Court of Appeal. The Council will now wait to see if this course of action is taken.
9. Subject to achieving a revised GDA, HIF funding will have to be defrayed within the HIF availability period which runs until March 2025. The estimated costs of the southern distributor road exceeds the £75 million HIF funding contained in the original GDA. Thus subject to the Local plan review and the statutory planning process if the road construction proceeds HIF funding will be the first call on finance with the balance funded by the Council such that a recovery strategy is agreed so that the Council's funding is recovered from development as it comes forward and there is no net cost to the Council. To be able to achieve that time line the Council will need to procure the road construction contract, archaeological investigations and progress with the masterplan, land assembly and consultation. As that work would be at risk and at significant cost to the Council without an agreed revised GDA, it is recommended that the work is paused until a revised GDA is agreed.
10. If a revised GDA cannot be agreed by the end of July 2022 the Council may need to negotiate an exit from the existing GDA as it will not be possible to deliver the project within the HIF availability period without exposing the Council to financial risk. Leading Counsel's advice was sought on the implications for an exit from the GDA should this occur. That advice is set out in part 2 of the agenda.
11. Overview and scrutiny has been engaged with and a briefing is scheduled to take place prior to the cabinet meeting.

Safeguarding Implications

12. There are no safeguarding implications at this stage

Public Health Implications

13. There are no public health implications at this stage

Procurement Implications

14. All procurement associated with the project will take place within the Council's procurement and commercial strategy and in conjunction with the Council's procurement team.
15. Whilst Cabinet considers the recommendations in this proposal all intended procurement exercises have been paused to mitigate any potential reputational issues arising should prospective tenders need to be withdrawn from the market.

Equalities Impact of the Proposal

16. There are no direct equality impacts from this report. However, should the Future Chippenham programme not proceed, there is a potential risk that a reduced level of affordable housing will be available in Chippenham with a lack of connectivity to the town centre and community infrastructure within the development area.

Environmental and Climate Change Considerations

17. As this report is to request approval to enter into a revised GDA with Homes England there is no direct environment or climate change considerations to be made at this stage. The terms of the GDA will require the Council to have full regard to all relevant environmental and climate change legislation and requirements in the Local Plan process as the project progresses. The project is cognisant that local planning policy may have requirements on how any development takes place and will, where required, comply with these.

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

18. If the Council continues the necessary work to progress the Future Chippenham programme without an agreed revised GDA then it will expose itself to significant abortive work and financial risk.

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

19. If it proves not possible to achieve a revised GDA based on the decision of the July 21 2021 cabinet decision, there is risk that the Council will not be able to claim HIF funding for work that it has undertaken at risk. The financial risk for the Council if that materialises can be mitigated by reduced development or asset disposal subject to the Local plan review.

Financial Implications

20. In delivering the Future Chippenham programme to date, the Council has been able to claim £6.375m from Homes England. In the absence of an agreed GDA, the Council has continued to progress the programme in good faith, but at risk in order to achieve the grant expenditure date.

21. The ability for the Council to recover any outstanding grant payments is contained with the Counsel advice sought regarding the GDA.

Legal Implications

22. This report is providing an update on the progress of the Future Chippenham programme and representations provided on the Local Plan Review since the Council decision in July 2021 to seek an amendment to the Grant Determination Agreement with Homes England to fund a programme to the south of Chippenham.
23. It also seeks approval to pause design work on the programme pending agreement on a revised GDA or if the HIF funding. The legal processes involved on this update information are detailed in the body of the report.
24. One of the possible outcomes going forward is the possibility of having to negotiate an exit to the GDA. Leading Counsel's advice has been sought on the Council's options should it be obliged to consider exiting the GDA and that advice is set out in part 2 of the agenda.

Workforce Implications

25. There are no workforce implications at this stage

Options Considered

26. The Council could continue progressing the Future Chippenham programme at risk without an agreed revised GDA. That will expose the Council to significant financial risk regardless of the outcome of the Local plan review. Therefore, this option is not recommended.
27. The Council can decide to pause work subject to achieving a revised GDA. However, there is a window within which the revised GDA should be concluded to ensure that the HIF funding available to the Council does not generate financial risk for the Council. Therefore, to protect the Council's financial interests it is recommended further design work and procurement is paused.

Conclusions

28. Following the Cabinet's decision in July 2021 to seek a revision to the GDA with Homes England to support a southern only road route and development proposals, discussions have been taking place with Homes England. During this period the Council has continued design work in good faith but at risk.
29. The availability period for HIF funding to be defrayed by March 2025 means that procurement of road and associated design and investigatory

work needs to be commissioned now so that subject to the Local plan review the Council can proceed with the scheme.

30. Incurring further expense at risk without agreement to a revised GDA places unacceptable risk on the Council. This report therefore seeks authority to pause that work and seek a resolution to a revised GDA before proceeding with any further with the Future Chippenham programme.
31. The full proposals are set out in the summary section at the front of this report.

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Appendices

Appendix 1

Background Papers

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