

**Wiltshire Council**

**Cabinet**

**13<sup>th</sup> October 2020**

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**Subject: Chippenham Housing Infrastructure Fund Bid**

**Cabinet Member: Cllr Philip Whitehead, Leader of the Council**

**Key Decision: Key**

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### **Executive Summary**

In March 2019, the Council submitted an application to the Ministry of Housing, Communities and Local Government (MHCLG) for a £75m Housing Infrastructure Fund (HIF) grant as a contribution towards funding strategic road infrastructure, enabling the delivery of housing in Chippenham. Confirmation that the Council's bid for funding was successful was announced in November 2019.

This report sets out the main elements of the Grant Determination Agreement (GDA) that has been negotiated with Homes England (HE) to secure £75m of HIF grant funding and seeks approval from Cabinet to enter into the GDA with HE. Subject to the conditions set in the GDA the Council will be able to draw down historic and preliminary costs incurred within the programme to date. An Assurance Framework (AF) sets out the funding process and establishes the approach to monitoring and evaluation.

The GDA provides a recovery mechanism that ensures there is no net cost to the Council. It contains provisions linked to milestones that allow draw down of funding subject to conditions being met. The GDA includes default clauses which determine whether the Council would have to repay HIF funds if a default occurs.

The conditions of the GDA are not considered to be disproportionate to the scale and complexity of the project and do not unduly increase the Council's risk exposure.

It will be a condition of the GDA that the £75m fund is spent by the end of March 2024. Any costs expended after that date, or above the £75m will be forward funded by the Council and recovered in full through the recovery strategy. The recovery strategy relies upon planning conditions on future development of any sites that come forward for development. As such the HIF funded works will not proceed planning unless is granted for development.

The Council will recover the £75m HIF to reinvest into the delivery of the scheme ensuring that capital and associated revenue costs will be recovered by the council with any remaining recovered funds being invested into infrastructure to support the delivery of additional housing within Wiltshire.

**Proposal(s)**

Cabinet is asked to:

Agree that the Council enters into the Grant Determination Agreement (GDA), subject to Homes England confirming that the Wiltshire HIF recovery strategy is approved and subject to the terms of the GDA being finalised by the Chief Executive in consultation with the Leader of the Council, Interim Corporate Director of Resources (S.151 Officer) and Director of Legal and Governance.

**Reason for Proposal(s)**

The proposals seek consideration of the Grant Determination Agreement negotiated with Homes England to secure housing infrastructure funding so as to ensure funding is available to support infrastructure led development coming forward at Chippenham, which is subject to determination by the Local Planning Authority.

Development has already started through the planning permission granted at Rawlings Green site and the Council, through this funding, will be in a position to secure infrastructure led development is achieved rather than being market led. These proposals will ensure that the Council can access Government funding to support delivery of strategic infrastructure should development come forward around Chippenham over the next Local Plan period and beyond.

**Terence Herbert, Chief Executive**

**Wiltshire Council**

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Lead Member Regeneration**

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### **Purpose of Report**

1. The purpose of this report is to seek approval to enter into a Grant Determination Agreement (GDA) with Homes England (HE) for the acceptance of a £75m grant contribution towards the cost of delivering the strategic infrastructure in and around Chippenham.

### **Relevance to the Council's Business Plan**

2. The Council's award from Government of HIF funding and delivery of the infrastructure directly contributes to all three priorities in the Business Plan
  - growing the economy
  - creating strong communities and
  - protecting the vulnerable

### **Background**

3. The Housing Infrastructure Fund is a government capital grant programme from the Ministry for Housing, Communities and Local Government (MHCLG) aimed at unlocking housing sites and helping deliver new homes. The fund was split into two packages:
  - 1) Marginal Viability HIF (initially for schemes up to £10m)
  - 2) Forward Funding HIF (initially for schemes up to £250m)
4. In March 2018 the Council submitted an expression of interest for the HIF Grant.
5. In March 2019 the Council submitted a final funding application to MHCLG after authority to submit was obtained from the Leader and the Chief Executive Officer (Place) for £75m, which included an allowance towards improvements to the J17 motorway junction related to the scheme.
6. The scope of the works proposed for HIF funding include the building of the distributor road. These works would be required as a first phase of strategic infrastructure to support new housing development at Chippenham.

7. In November 2019, MHCLG confirmed that the bid submitted by the Council had been successful. Subject to Cabinet approval the process to secure funding has been and is as follows:
  - a. Completed Heads of Terms (May 2020)
  - b. Complete and sign GDA (October 2020 – subject to satisfying all pre contract conditions)
  - c. Drawdown for historic and preliminary costs (October / November 2020 subject to signing the GDA)
  - d. First drawdown for actual construction works, subject to acquiring planning permission (indicatively March 2022)
- b) Satisfy post contract conditions (ongoing until completion)
  - a. It is a requirement of the GDA that HIF funds must be spent before the funding availability deadline of March 2024
  - b. It is a requirement of the GDA that road must be delivered by 31<sup>st</sup> March 2026

### **Main considerations for the Council**

8. The project has, through the successful HIF bid, secured funding for infrastructure work that will support land coming forward in Chippenham and the surrounding area to deliver new housing subject to the statutory planning process.
9. The £75m HIF funding will form a significant contribution to the total estimated cost of the strategic road infrastructure. The estimated cost will be in excess of the grant funding received and will require a level of upfront investment by the Council.
10. Sites are not currently allocated in the Local Plan and as such the infrastructure work supported by the HIF funding is subject to a) the statutory planning process allocating the sites in the Local Plan Review and b) the council as local planning authority granting planning permission for the distributor road and master plan for the site.
11. In order to ensure necessary infrastructure work is able to proceed in line with the statutory planning process and HIF availability period the following steps have been taken by the project thus far;

### **HIF Onsite works progress to date**

12. The following works have been completed or are ongoing to ensure the project is progressed against the timescales.
  - a. Site Surveys
  - b. Strategic transport modelling
  - c. Completion of strategic flood modelling and flood mitigation plan
  - d. Options assessment report for infrastructure works
  - e. Concept framework for the site including strategic infrastructure works, utilities, parks, and road bridges

- f. Work to support the Environmental Impact Assessment across the whole site
- g. Draft sustainability strategy for the delivery of strategic infrastructure works
- h. Development of a procurement strategy to support delivery of the infrastructure works

### **Land Assembly for delivery of the HIF works**

13. To progress the land assembly for the sites required for delivery of the HIF works the Council has commenced negotiations with landowners. As the exact road route option is yet to be determined, this will continue during the formal public consultation stage.
14. In the first instance, the Council's strategy is to acquire the necessary rights to the land that is required to ensure the delivery of the road infrastructure. Negotiations are progressing with parties to acquire the land required to deliver the HIF works, but will only be concluded once the preferred road route option is announced anticipated in Spring 2021.
15. In the event that acquisition by private agreement cannot be achieved, a Compulsory Purchase Order (CPO) will be necessary to acquire the remaining land. The CPO is also needed as a measure to cover unknown interests or unregistered land.
16. Should a CPO be implemented, any costs incurred by the Council in assembling land or making the CPO are not contained in the HIF bid. However, the Council has provision within the recovery strategy to recover any costs incurred through delivery of the infrastructure works to ensure the Council is able to recover any costs incurred.

### **Consultation on the proposed site(s) and HIF road route options**

17. Consultation on the proposed site(s) and HIF road route options was originally planned in April 2020. However due to the impacts of the COVID-19 restrictions this has now been moved to commence in January 2021. A Stakeholder and Community Engagement Strategy has been developed to support the programme and is included in Appendix A of this report. The strategy confirms the Council's commitment to engaging and consulting with stakeholders, members of the public and other interested parties on both the road route options and the emerging Masterplan. The preferred road route option will be selected by late Spring 2021 (subject to government guidance on COVID-19 and possible impacts on the consultation process) and the council will continue to consult on the Masterplan late spring / early summer 2021.
18. A summary of the indicative consultation timetable is provided below:

<b>Date</b>	<b>Milestone</b>
11 January 2021	Public consultation starts

05 March 2021	Public consultation ends
08 March 2021	Assessment of consultation responses and preparation of report for Cabinet
Spring 2021	Announcement of preferred road route option

### **Summary of funding terms and conditions**

19. The GDA includes both standard conditions for all HIF schemes as well as bespoke conditions for each project.
20. A summary of the legal implications on entering the GDA is provided for members in the Part II of this report which is exempt information under schedule 12A of the Local Government Act 1972 as amended.
21. The following is a summary of the provisions set out in the GDA which are standard conditions for HIF schemes:
- a. The GDA makes a Grant available to Wiltshire Council to a maximum of £75m under Section 19 of the Housing and Regeneration Act 2008 and in compliance with the requirements set out in the European Commission's Decision of 20 December 2011 concerning public service compensation granted for Services of General Economic Interest (2012/21/EU).
  - b. Homes England will entrust Wiltshire Council as the Grant Recipient with a public service obligation to provide land and facilitate the provision of affordable homes through the Councils affordable housing planning policies.
  - c. The funding is made available according to the proposals that Wiltshire Council has submitted to Homes England in respect of the proposed construction of Infrastructure Works and Housing Outputs, and Homes England has agreed in principle to make the HIF funding available on terms which are set out in the Assurance Framework.
  - d. With respect to the Preliminary Costs (i.e., the costs incurred by the Council so far in developing the Future Chippenham scheme to this stage), the obligation of Homes England to make available HIF funding is subject to confirmation and evidence from the Council's Section 151 Officer that the Council has incurred the costs relating to that part of the claim and such costs form part of the Preliminary Costs and relate to the Infrastructure Works.
  - e. With respect to all other costs, the funding is made available subject to the discharge of conditions precedent of which the most important is that the Council enters into agreements which secure, amongst other things, the delivery of infrastructure and the future use of various sites to facilitate an increase in the level of housing in the Chippenham area, and implements a Recovery Strategy approved by Homes England to

secure recovery of the funding to invest in further schemes to facilitate new housing development.

- f. This includes confirmation of the grant of detailed planning permission including approval of siting, design, access and use, landscaping and materials, as well as confirmation that all rights have been required in the Infrastructure Site and access have been secured.
- g. The Agreement also sets out the terms and conditions upon which specific amounts of HIF Funding will be advanced to the council as Grant Recipient by Homes England as the programme progresses.
- h. The Funding is made available until the end of March 2024 and may be used for Infrastructure Expenditure only. The commencement and completion of the Infrastructure Works are to be delivered in accordance with the Delivery Plan and in any event to be completed by 31 March 2026.
- i. The Infrastructure Works are to be implemented in compliance with relevant regulatory and operational obligations including the receipt of all necessary consents (Including planning permission), public procurement laws, and other legislation including health and safety, and equality and diversity.
- j. The Council will provide Homes England with an Annual Forecast and Monitoring Reports throughout the lifetime of the programme in line with the specific requirements set out in the GDA, in addition to an Annual Review Meeting with Homes England
- k. The GDA distinguishes between two types of default: Fundamental, and General. A Fundamental Default would only occur in extreme circumstances and could lead to the GDA being terminated, with Homes England having the ability to seek the repayment and reallocation of HIF Funding together with interest. This would, for example, include a situation where the Council's Section 151 officer has issued a notice under section 114 Local Government Finance Act 1988 that the council is unable to balance its budget.

General Default covers all other issues that may arise during the delivery of the scheme that are capable of remedy e.g. failure to obtain planning permission within the agreed milestone, which could be remedied by agreeing a revised timescale. It provides a process by which the Council would submit a proposed remediation plan for Homes England's approval. In the unlikely event that a General Default cannot be remedied satisfactorily, the GDA provides for the Agreement and further grant payments to be terminated, however it does not provide for HIF funding already paid to the Grant Recipient to be repaid.

- l. The GDA also contains other provisions relating to communications and confidentiality, freedom of information, data protection, intellectual property, indemnity, governance arrangements and disputes resolution.

22. Project specific conditions are included within the schedules of the GDA and are also included in Part II of this report since they are exempt information under section 12A of the Local Government Act 1972 as amended. The paragraphs below provide a brief summary of these:

### **Pre contract conditions**

23. There are 21 precontract conditions to be complied with prior to signing the funding agreement. Pre-conditions submissions have been made to Homes England and include but are not limited to, project information on governance arrangements, programme for infrastructure and housing delivery, financial model and CPO strategy.

24. At the time of writing this report, the project team has provided Homes England with the information to satisfy the pre contract conditions from Homes England. Upon satisfaction of the pre contract conditions and signing of the GDA the Council may claim for its historic and preliminary costs.

### **Pre works Conditions and ongoing contractual monitoring obligations**

25. There are further pre works conditions that must be complied with prior to the Council being able to drawdown funding from Homes England for actual construction works. Most of the pre-works conditions relate to the delivery of the HIF road including obtaining planning consent.

### **MHCLG Assurance Framework and payment mechanisms**

26. The Assurance Framework (AF) sets out the background to the Housing Infrastructure Funding process, how local authorities receive and utilise funding and establishes a robust approach to reporting and monitoring implementation. The framework provides assurance to MHCLG Officers that robust systems are in place to ensure funds are spent with regularity, propriety, and value for money, whilst achieving projected outcomes.

### **Overview and Scrutiny Engagement**

27. Engagement with Overview and Scrutiny has not formally taken place around the specifics of the GDA, but a briefing with relevant Overview and Scrutiny Members is being held to update on this report.

28. Overview and Scrutiny engagement will be required on an ongoing basis over the life of the project, given its scale and associated risks. This will become necessary once the Council is successful in getting into contract with Homes England and delivery of the funded project is then confirmed.

### **Safeguarding Implications**

29. There are no safeguarding implications at this stage

### **Public Health Implications**



30. No public health implications arise at this stage

### **Procurement Implications**

31. All procurement associated with the project will take place within the Council's procurement and commercial strategy.

### **Equalities Impact of the Proposal**

32. There are no Equalities Impacts arising at this stage

### **Environmental and Climate Change Considerations**

33. There are no Environment and 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**

34. The deadline for signing HIF agreements is 31<sup>st</sup> October 2020, so there is no opportunity to renegotiate at this stage. If the proposed decision to enter the GDA was not taken, then the opportunity to draw down £75m of government funding to support infrastructure costs should development come forward in Chippenham would be lost.

35. The spend already incurred as at 2019/2020 would not be recoverable via HIF and would need to be found from an alternative source.

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

36. There are risks around delivering on the Council's commitment in the GDA, which are mitigated in the project specific terms and conditions pertaining to delivery of the milestones within the agreement. These include robust governance, monitoring and reporting standards which meet government's and the Council's risk management requirements.

37. The GDA makes reference to General Default and Fundamental Default. The meaning and implications of these are addressed under Part II of this report.

38. There is a risk that the Local Plan Review process does not seek to allocate the project site for development and as such planning consent is not achieved for the infrastructure works. In that event, the GDA caters for this as a General Default and the HIF funding drawn down by the Council would

not need to be repaid, provided that the Council had used best endeavours to secure such allocation and planning permission.

### **Financial Implications**

39. At its meeting on 8 October 2019, Cabinet noted the application to the Governments Housing Infrastructure Fund (HIF) for £75m worth of funding to support the strategic infrastructure required in and around Chippenham.
40. Following the notification of success, the £75 million HIF was included in the capital programme 2020/21 to 2029/30 that was approved by Full Council in February 2020, with the details of the programme and the negotiation of the GDA to then take place. £5m was allocated in this current financial year, to be fully funded by the grant.
41. At its March meeting Cabinet approved the advance of £4.220m from the Capital pipeline budget to the Future Chippenham team prior to the receipt of the HIF funding to progress the programme. A further £1m capital allocation was also approved to fund the team which would not be eligible to be claimed from the HIF grant.
42. The recommendation in this report is based on conditions being met that ensure that the negotiation with Homes England finalises a GDA that mitigates the risk being faced by the Council in developing out the strategic infrastructure.
43. Critical to this is a recovery strategy that enables the Council to maximise the offer of grant funding available to develop out the infrastructure and ensure an infrastructure first development, and then deploys arrangements that over the life of the development, through future receipts, covers the cost of the Council's upfront investment.
44. The details on the cost of the strategic infrastructure, the HIF funding and Councils upfront investment, together with the recovery strategy is provided in the confidential Part II section of the report.

### **Legal Implications**

45. Section 1 of the Localism Act 2011 provides the 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. This general power of competence provides sufficient power for the Council to enter into a grant funding agreement with the Ministry of Housing Communities and Local Government.
46. As part of the conditions of funding, the Council must satisfy itself, as well as Homes England that the Housing Infrastructure Funding which is awarded by Homes England for the delivery of the infrastructure works, is not in breach of State Aid rules. The Council has obtained legal advice in

this regard from its external legal advisers, Trowers & Hamlins LLP. This advice has concluded that the funding is State Aid compliant.

47. Availability of funding will be contingent on satisfaction by the Council of certain conditions prior to drawdown of funding. These conditions are set out in the Grant Determination Agreement between Homes England and the Council (further details of which are provided under Part II of this report).
48. Once the grant agreement is entered into, notwithstanding any pre-conditions to funding, the Council will be entitled to claim and drawdown on the funding any historic and preliminary costs already incurred by the Council, subject to such costs specifically relating to the Council's bid for the HIF funding and to appropriate evidence of expenditure being provided by the Council's Section 151 Officer.
49. All legal agreements entered into in consequence of the approval of the recommendations set out in this report must be approved in advance of commencement by the Director of Legal and Governance/Monitoring Officer.
50. Further comments on the legal implications of the GDA are contained in Part II of the report.

### **Workforce Implications**

51. No further workforce implications are reported at this time internally.

### **Options considered**

#### **i. Do nothing**

The £75m funding opportunity and the ability to utilise recovery to fund the remaining costs of the scheme would be lost and the infrastructure required should development come forward around Chippenham would not come forward. This would significantly delay developments. Furthermore, the expenditure incurred to date by the Council would not be recoverable via HIF and would need to be found from another source. For these reasons this is not the preferred option.

#### **ii. Renegotiate terms with Homes England**

Negotiations with Homes England are at a very mature stage and subject to agreement with Homes England of the HIF Recovery Strategy which ensures that there will be no net cost to the Council in delivery, the terms and conditions of the GDA are proportionate and reasonable to the scale and objectives of the project. Given the October deadline for signing of HIF GDA, there is limited opportunity at this stage for further negotiation. This is therefore not the preferred option.

#### **iii. Enter into the GDA subject to the conditions set out in the GDA**

In consideration of all the factors discussed in this report, this is the preferred option.

## **Conclusions**

52. In consideration of the above information it is recommended that Cabinet agree to and approve the steps set out in the proposals section fronting this report.

Terence Herbert – Chief Executive

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Date of report 5<sup>th</sup> October 2020

Appendice(s)

Appendix 1 – Future Chippenham stakeholder and community engagement strategy

Confidential Part 2 Appendix 2 – Financial and Legal Implications of the Grant Determination Agreement