

Cabinet Member for Finance, Development Management and Strategic Planning

Cllr Nick Botterill

Officer Contact: Scott Anderson, 01722 434689, scott.anderson@wiltshire.gov.uk

Reference: FDMSP-01-24

Deed of Termination HIF MVF 272 Ashton Park Funding Agreement

Purpose of Report

1. To terminate a Grant Funding Agreement with Homes England which was intended to support the delivery of a developer-led residential scheme at Ashton Park, Trowbridge.

Relevance to the Council's Business Plan

2. As an efficient and healthy organisation, the council should seek to work in partnership across public sector organisations and be transparent and accountable to its partners while managing risk appropriately.

Background

3. On 30 April 2019 cabinet delegated authority to the Corporate Director Place, Growth and Investment to enter into an agreement with Homes England to provide £8.784m of Housing Infrastructure Funding to support the delivery a developer-led residential scheme at Ashton Park, Trowbridge.
4. Following discharge of several pre-funding conditions, the council entered into a contractual Grant Funding Agreement with Homes England on 20 December 2019. Amongst other provisions the Grant Funding Agreement provided for 'Events of Default' which would arise amongst other reasons should project milestones fail to be met by certain dates. An Event of Default could result in the Grant Funding Agreement's termination and potentially clawback of any funds drawn down at that time.
5. Despite the offer of funding, the project remained challenging and complex for the developer to deliver. On 30 June 2020, the Funding milestones for securing Reserved Matters Planning Permission for the Funded Infrastructure Works and completion of a section 106 agreement between the Local Planning Authority and the developer for their construction, were missed.
6. In its role as grant recipient, the council continued to liaise with the developer and Homes England, to discuss the obstacles to delivery and explore options to deploy the funding to accelerate delivery. In June 2022 the council signed with Homes England a Deed of Variation to the original Grant Funding Agreement which revised milestones to maintain the availability of the grant towards the scheme.
7. However, the scheme continued to stall. While the section 106 agreement had been expected to be signed by July 2022 to meet with planning conditions, this deadline was missed. The council's strategic planning committee agreeing to extend the deadline attached to this planning condition to January 2023. However, as the revised

deadline approached, the developer submitted a statement to the council on 16 December 2022, citing the impact of changes in the wider housing market on scheme viability meaning that it would be unable to proceed with signing the section 106 agreement.

8. Given that there would now be no certainty that the developer would meet the revised milestones set out within the Deed of Variation to the original Grant Funding Agreement, the council reluctantly but transparently notified Homes England of its intention to withdraw from the Grant Funding Agreement on 31 March 2023.

Main Considerations for the Council

9. Following the council's notification to Homes England on its intention to withdraw from the Grant Funding Agreement, work has taken place to:
 - a. Submit and draw down, with Homes England's approval, a final claim for funding to ensure that the council is not left financially disadvantaged for its commitment to enabling the project to proceed
 - b. Agree the terms of a Deed of Termination which once signed will formally end (with two exceptions noted under 'Risks to the Council' below), the council's and Homes England's obligations regarding funding the developer to deliver the Ashton Park scheme
10. The Deed of Termination is needed to accord with the council's and Homes England's budget setting requirements insofar as confirming the removal of a £8.784 million funding allocation towards the Ashton Park scheme. It is also in the best interest of all parties to bring the Grant Funding Agreement arrangements to an end to ensure any contractual obligations are legally terminated
11. The administration of the Homes England grant, including this proposal to sign the Deed of Termination, sits separately from the council's function as the Local Planning Authority for Wiltshire.
12. Risks that may arise from the signing of the Deed of Termination are detailed under the relevant section of this report, below.

Overview and Scrutiny Engagement

13. The termination of the Grant Funding Agreement is an administrative matter pursuant to the issues that have been set out above. Specific engagement with the council's Overview and Scrutiny function would therefore not be appropriate.

Safeguarding Implications

14. There are no Safeguarding Implications arising from this decision.

Public Health Implications

15. There are no Public Health Implications arising from this decision.

Procurement Implications

16. There are no Procurement Implications arising from this decision.

Equalities Impact of the Proposal

17. There are no Equalities Impacts arising from this decision.

Environmental and Climate Change Considerations

18. There are no Environmental or Climate Change Considerations arising from this decision.

Workforce Implications

19. There are no Workforce Implications arising from this decision.

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

20. The council has agreed its intention to terminate the Grant Funding Agreement in dialogue with Homes England. Failure to complete the Deed of Termination would cause budget setting issues for both the council and Homes England and fail to act in the best interests of all parties by legally terminating contractual obligations.

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

21. The council will remain under some confidentiality obligations to consult with Homes England if it receives requests for information under relevant legislation. The risk of failing to meet these obligations will be mitigated by notifying the council's Information Governance team of this requirement and the relevant contact details.

22. Either party of the Grant Funding Agreement will remain entitled to bring or continue claims pursuant to the grant agreement which arose prior to the Termination Date (which will be the Date on which the Deed is signed). The risk this raises is the possibility that a claim associated with the Event of Default could still be progressed, and such a claim could result in clawback of monies paid under the Grant Agreement. This risk is mitigated by the transparency of dialogue which has been maintained between the council and Homes England in respect of this project.

Financial Implications

23. The signing of the Deed of Termination is required to confirm the removal of a £8.784 million allocation towards the Ashton Park scheme, based on the Grant Offer from Homes England, from the council's capital programme. Entry into the Deed of Termination does not otherwise have any additional cost or expenditure implications.

Legal Implications

24. Legal Services have been engaged on the exit arrangements and the documentation to give effect to the proposal.

25. The terms of the Grant Funding Agreement require the council to deliver various milestones, therefore it is in the interests of all parties to bring these arrangements to an end to ensure any contractual obligations are legally terminated.

26. The risks associated with entry into the Deed of Termination have been summarised above.

Options Considered

27. The option of not signing the Deed of Termination has been dismissed due to there being no advantages to leaving the grant agreement in place, the requirement to sign the Deed of Termination to satisfy budget setting requirements for both the council and Homes England, and it being in the best interests of all parties to bring the Grant Agreement arrangements to an end and legally terminate any contractual obligations.

Conclusions/Proposal

28. The Deed of Termination should be signed to ensure clarity between the council and Homes England, to satisfy budget setting requirements for both organisations, and to act in the best interests of all parties.

Parvis Khansari, Corporate Director Place

Report Author: Scott Anderson, Programme Specialist Regeneration,
scott.anderson@wiltshire.gov.uk, 01722 434689

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Appendices

None

Background Papers

[Strategic Planning Committee - Wednesday 15 June 2022 10.30 am](#)
[Strategic Planning Committee - Wednesday 11 January 2023 10.30 am](#)