

# **Cherwell District Council**

## **Executive**

**7 October 2019**

<p><b>Marginal Viability HIF Funding for Rail Bridge for Howes Lane Realignment Bicester</b></p>
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### **Report of Assistant Director – Growth and Economy**

This report is public

#### **1.0 Purpose of report**

- 1.1 This report considers the implications for CDC entering into a legal agreement with Oxfordshire County Council (OCC) in connection with the delivery of the rail bridge to enable the realignment of Howes Lane in Bicester.
- 1.2 The agreement will require CDC to seek, should the development subsequently become viable, contributions toward the cost of delivery of infrastructure through development receipts. In accordance with the terms of the funding agreement, spend any released excess MV HIF (Marginal Viability Homes Infrastructure Fund) grant on the delivery of housing.

#### **2.0 Recommendations**

- 2.1 Subject to OCC completing the MV HIF agreement, the Executive is recommended to agree to:
  - a) enter into a “back-to-back” agreement with OCC to take on the MV HIF obligations seeking to secure funding towards the cost of the delivery of the Howes Lane infrastructure. In addition, to use any excess grant funding (released as a result of the development funds contributing towards the cost of delivering the infrastructure) to deliver housing (subject to any legal issues being resolved and remedied);and
  - b) delegate to the Assistant Director – Growth and Economy, in consultation with the Lead Member for Economy, Regeneration and Property and the Team Leader – Non-contentious, the negotiation and completion of the agreement with OCC.

#### **3.0 Background**

- 3.1 CDC has been successful in bidding for HM Government MV HIF money (£6.7m) for the rail bridge necessary for the realignment of Howes Lane, Bicester.

- 3.2 The realignment of the road (including the bridge under the railway) will improve highway capacity on the west side of the town and support North West Bicester housing delivery. As OCC is delivering the works, the funding agreement will be between OCC and Homes England (HE). However, there are obligations contained within that funding agreement to which OCC is not best placed to commit; as a result, CDC has been asked to perform those obligations on OCC's behalf.

## **4.0 Current issues**

- 4.1 The MV HIF is being offered because it has been demonstrated that the development at NW Bicester is *currently* not viable without support for the delivery of infrastructure. Whilst this remains the case, there is no requirement placed upon developers to contribute to the funding of the infrastructure.
- 4.2 If however, over the passage of time, viability of the scheme improves and there is additional profit, HE requires local authorities to recover the cost of infrastructure from the development; this would also address any potential state aid issues. Under these circumstances the HE grant (with the prior agreement of HE) is required to be spent on progressing housing delivery in Cherwell.
- 4.3 The s106 mechanism, in connection with planning applications, provides a route to secure developer contributions which will be retrospectively applied to the cost of delivering the infrastructure. Any grant that has been used for forward funding which is subsequently released by HE back to CDC, in accordance with the terms of the funding agreement, could be spent in a variety of ways including the delivery of increased affordable housing.
- 4.4 In the event that the scheme becomes viable, HE would require CDC (via their agreement with OCC) to cover the cost of delivering infrastructure which may result in it being a priority for s106 until the total cost of the infrastructure is paid for. The implications of this are that some other s106 mitigations may be delayed or simply may not be able to be funded at all. In such event, in the future, members may need to make choices between competing priorities.
- 4.5 There are some risks associated with the proposed agreement with OCC that members should be aware of and which are dealt with under section 7.3.
- 4.6 It should be noted that the use of MV HIF to forward fund the delivery of the Infrastructure makes it more likely that the realignment of Howes Lane can also be forward funded, through Growth Deal and other funding sources. This will unlock the North West Bicester site for development, enabling support for housing delivery.

## **5.0 Conclusion and Reasons for Recommendations**

- 5.1 The conclusion is that the securing of this marginal viability funding from HE is a positive development and supports CDC's growth agenda.

5.2 In pursuit of this and subject to OCC being able to complete the MV HIF agreement with HE, the Executive is recommended to agree to:

- a) enter into a “back-to-back” agreement with OCC to take on the MV HIF obligations seeking to secure funding towards the cost of the delivery of the Howes Lane infrastructure and to then use any excess grant funding (released as a result of the development funds contributing towards the cost of delivering the infrastructure) to deliver housing (subject to any legal issues being resolved and remedied);

and

- b) to delegate to the Assistant Director – Growth and Economy, in consultation with the Lead Member for Economy, Regeneration and Property and Team Leader – Non-contentious, the negotiation and completion of the agreement with OCC.

## **6.0 Alternative Options and Reasons for Rejection**

6.1 The following alternative options have been identified and rejected for the reasons as set out below.

- a) Option 1: Not to pursue the securing of funding. This could delay the provision of the realigned Howes Lane and subsequently some housing delivery and as such is not recommended
- b) Option 2: Not to enter into an agreement with OCC that passes on the obligations to seek to recoup funding and use receipts to deliver housing. This option is not recommended as it is likely to prevent the funding being secured and results in a lost opportunity to release excess grant funding for housing.

## **7.0 Implications**

### **Financial and Resource Implications**

7.1 Entering in to an agreement will require suitable legal resources and the obligations will require additional consideration as part of development proposals. However, it is anticipated that these can be met within existing resources.

Comments checked by:

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### **Legal Implications**

7.2 The back to back agreement with OCC is intended to provide comfort to OCC, who would be drawing down funds from HE and be liable to the funder directly, though its terms will also need to recognise the risk to the District Council in recovering development receipts to refund the forward funding from HE which will result in an excess of the grant funded monies. It is anticipated that, in the event such excess grant funds become available, HE will authorise CDC to utilise such monies to deliver housing in accordance with the terms of the funding agreement. It is a

careful balancing act where both the County and District Councils will be looking to mitigate risk as much as possible, and the discussions with HE in this regard will be closely observed.

The Director: Law and Governance for Cherwell District Council shares that role with Oxfordshire County Council and is therefore potentially conflicted from agreeing final terms with OCC in the back to back agreement, hence the recommendation to delegate agreement as to terms down to the Team Leader – Non-contentious for Cherwell District Council.

Comments checked by:

Richard Hawtin, Team Leader – Non-contentious, 01295 221695, email: [richard.hawtin@cherwell-dc.gov.uk](mailto:richard.hawtin@cherwell-dc.gov.uk)

### **Risks**

- 7.3 In the event that the scheme becomes viable and CDC fails to perform any obligations within the agreement then there could be a risk that HE may seek to recover the grant via OCC. Officers are aware of these risks and will take all necessary steps to mitigate and reduce this and any other risk that emerges as part of the negotiation and finalising of the agreement with OCC.

Comments checked by:

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## **8.0 Decision Information**

**Key Decision:** No

**Financial Threshold Met:** No

**Community Impact Threshold Met:** No

### **Wards Affected**

Bicester North and Caversfield  
Bicester CP

### **Links to Corporate Plan and Policy Framework**

District of Opportunity  
Adopted Cherwell Local Plan policy Bicester 1

### **Lead Councillor:**

Councillor Lynn Pratt, Lead Member for Economy, Regeneration and Property

## Document Information

Appendix No	Title
None	
Background Papers	
None	
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