

## **Divisions Affected - Didcot, Hendreds & Harwell, Sutton Courtenay & Marcham, Berinsfield & Garsington**

### **CABINET**

**21st June 2022**

## **Didcot Garden Town Housing Infrastructure Fund (HIF) Revised Grant Determination Agreement**

### **Report by Director for Transport and Infrastructure**

#### **RECOMMENDATION**

1. **The Cabinet is RECOMMENDED to:**
  1. **Approve the amendments to the Grant Determination Agreement (GDA)**
  2. **Seek an additional letter of comfort from Homes England and Department of Levelling Up, Housing and Communities (DLUHC).**
  3. **Authorise the signing of the Grant Determination Agreement by the Director for Transport and Infrastructure, in consultation with the Director of Law & Governance, Director of Finance, Cabinet Member for Travel and Development Strategy and Cabinet Member for Finance.**

#### **Executive Summary**

2. The Cabinet meeting of 15<sup>th</sup> March 2022 approved the renegotiation of the HIF Didcot Garden Town Grant Determination Agreement (GDA), between Oxfordshire County Council and Homes England, with a request for terms to include:
  - a) an extension to the availability period to 31st March 2026 and assurance that risks to the delivery time frame caused by exceptional circumstances outside the Council's direct control will be mitigated
  - b) confirmation of an increase in funding to £239,816,437
  - c) confirmation that the Council has flexibility, subject to timescale and costs, to design and deliver infrastructure that will reduce the carbon impact and reduce the need to travel by car.

3. A deed of variation has been drafted which includes the points outlined by Cabinet on the 15<sup>th</sup> March. Apart from 2a above, all other requests have been accepted by Homes England and will be included in the amended GDA.
4. The request for inclusion of additional assurance relating to exceptional circumstances including the current global economic challenges has been declined by Homes England
5. This report outlines the renegotiated position and options considered.
6. The residual risks are outlined for the Council which include the County Council are responsible for any cost and time overruns and the mitigation measures available.
7. A Didcot area strategy has been scoped and will look at the movement of people and goods in the Didcot area connected to the HIF1 scheme. The strategy will present future development and complementary measures needed to influence travel behaviours.
8. A CAG has been established and is now meeting regularly to advise the Portfolio holder on the scheme development and the wider Didcot masterplan and strategy.

## **Exempt Information**

9. The correspondence between the Council and Homes England regarding the draft Grant Determination Agreement Deed of Variation is subject to further legal advice and detailed negotiation and is therefore confidential.

## **Grant Determination Agreement – Deed of Variation**

10. The Cabinet meeting of 15<sup>th</sup> March 2022 directed the renegotiation of the HIF Didcot Garden Town Grant Determination Agreement (GDA). Following the negotiations, the following amendments have been agreed in principle by Homes England.
11. These changes have been agreed and included initially in a letter dated 07 February 2022 (see Appendix 1) and included in the draft Deed of Variation.
  - a) an extension to the availability period to 31st March 2026
  - b) confirmation of an increase in funding from HIF to £239,816,437
  - c) updated schedule 1 which includes the description has been amended to allow for design amendments. These include:
    - i. to reduce the embodied carbon through design, construction, material changes
    - ii. Measures to facilitate further faster connected public transport, active travel, connections to transport hubs and Connected Automotous Vehicle networks.

- iii. Increased Biodiversity across the scheme including further tree planting and carbon absorbing planting.
  - iv. Using innovation to dynamically monitor the infrastructure relating to carbon and biodiversity to understand further future interventions needed.
- 12. In addition, Homes England have agreed to changes in the GDA to enable construction of each scheme to take place as soon as land has been secured without the need for all land to be secured before any construction commences. This will enable a smoothing of the spend profile and a reduction of risk to the Council.
- 13. The extension to timescales and additional funding are subject to additional conditions set by Homes England:
  - i. Confirmation that the council remains committed to unlocking 12,655 housing outputs for this investment.
  - ii. Confirmation that the additional funding required to cover the cost increases of the scheme are met by council reserves or other sources; and,
  - iii. Confirmation that the council has completed the required due diligence work.
- 14. The Council requested to extend the GDA exceptional circumstances to reflect the current global situation and impact on supply, energy and increase costs. The Council also requested that the exceptional circumstances should cover the availability period of the funding to enable a mechanism to discuss with Department for Levelling Up and HM Treasury. Homes England would not agree to change as this would change the core provisions in the agreement and the wider implications on the national HIF programme.

## **Financial Implications**

- 16. The GDA amendment will increase the HIF1 allocation by £21,800,000 as set out in Table 1 below. The Council has agreed to provision for the balance through prudential borrowing, should this be required. However, the Council will be capping the contribution at £30m due the potential impact on other Council services. The scheme will need to be carefully managed to ensure that there is no further overspends above the capped limit.
- 17. This will be achieved by:
  - (a) looking for further value engineering opportunities and reducing elements of the scheme that can be delivered through other means.
  - (b) Increasing the capital governance using the Strategic Capital Board, prior to contract award for any stage or element of the project to ensure the Council contribution does not exceed the £30m cap. If there were any risk of the contracts overspending without available funding, then triggering a decision to stop any further work on that element of the scheme.

- (c) To continue to regularly review and quantify the risks for the scheme ensuring there is contingency set aside for known risks.
18. There is a value engineering exercise ongoing to reduce costs where possible. This will allow for savings and efficiencies which can be reallocated for design amendments to reduce the carbon impact and reduce the need to travel by car.
19. The revisions allowing construction expenditure to be brought forward will change the profile of the schemes. This is being revised alongside the land acquisition strategy to smooth the spend profile and further reduce the financial risk

Table 1 – Revised Funding Summary

20.

<b>Source</b>	<b>Value (£'000's)</b>
Housing Infrastructure Fund grant	£ 218,020
Section 106 (held)	£ 6,736
Section 106 (underwritten by Council but expected to be received prior to project close)	£ 9,713
<b>Additional capital contributions</b>	
Additional Housing Infrastructure Fund grant	£ 21,800
Oxfordshire Local Enterprise Partnership	£ 10,000
Council capital borrowing (approved as part of budget 8 <sup>th</sup> February 2022)	£ 29,893
<b>Total</b>	<b>£ 296,152</b>

21. Contingency and inflation have been included in the cost estimates. Due the volatility of the construction sector and inflationary indices, any further inflation is being assessed across the capital programme and Oxfordshire are in discussions with Homes England about how this will be managed. At present the increased inflation is a quantified risk for the council and will be addressed when it becomes an issue and further information is available.

Comments checked by:

Lorna Baxter, Director of Finance

## **Legal Implications**

22. There are several legal mechanisms within the current GDA agreement which reduce the risk on the Council. The milestone extension events outline the exceptional circumstances that, if they occur, trigger discussions with Homes England and result in movement of the Milestone Date(s) set in the GDA.
23. There is a mechanism for escalating issues affecting the delivery of the infrastructure schemes to Homes England and the DLUHC. This escalation has

been used in negotiating the revised availability period and finances in the GDA Deed of variation.

24. Any changes to the GDA as amended by the Variation Agreement are binding on the parties, any correspondence outside of the legal agreement may be considered but parties are not committed to the obligations set out in a letter.

Comments checked by:

Bede Murtagh, Contracts Solicitor

## **Staff Implications**

25. The Deed of Variation will allow the scheme to continue and resources to be deployed on the set workstreams. Further staff and consultant support is being brought in to advise on the design changes and innovative measures needed to align the design to the Councils ambitions.

## **Equality & Inclusion Implications**

26. The equalities implications of the HIF1 Scheme have been assessed robustly through the design development stages of the Scheme and in reaching the preferred option. These equalities implications have been considered in line with the Equality Act 2010 through the completion of an Equality Impact Assessment (EqIA)

## **Sustainability Implications**

27. The HIF1 Scheme is designed to promote sustainable modes of travel for access into and around Didcot by commuting traffic by modal shift away from the private vehicle and on to public transport or by walking and cycling. High-quality pedestrian and cycling infrastructure will be provided along the full length of the Scheme, with new routes setting the conditions for new bus services between Oxford, Culham, Didcot and Harwell. In reducing traffic congestion levels, this has positive impacts on air quality and carbon emissions, especially in local villages such as Sutton Courtenay, Appleford, Long Wittenham, Clifton Hampden and Burcot.
28. During the next stages of Scheme delivery, there will be specific sustainability targets for the design and build contractor with the likes of re-use of site-won materials as an example of how additional environmental impacts during construction will be reduced.

## **Risk Management**

### ***Managing the financial risk for the Council***

29. The core concern for the Council is the financial risk faced if there are any delays to delivery caused by exceptional circumstances. The Council will have to pay for any cost overruns past the end of the funding availability period of March 2026. This is of special concern during the construction phase when the expenditure is at its highest with forecast showing approximately £16m spent per month.
30. At the time of contracting the original agreement with Homes England, a clause was inserted to ensure that Homes England could not clawback funding that had been spent on the scheme in good faith. Therefore, if the Council wants to stop the scheme due to the financial risk, they will not need to repay any funding spent to date.
31. The current GDA requires the Council to secure all the land prior to the start of construction of any of the four infrastructure pieces. This means that all the infrastructure elements will be constructed at the same point and creates a peak of expenditure at that point.
32. Homes England have agreed to remove the requirement for full assembly of land prior to construction which means that the construction of the four elements can be phased. Once all the land has been secured for one element of the scheme, then construction can commence, spreading the construction expenditure over a number of months. This in turn will reduce the risk of high expenditure after the availability period ends.
33. The terms of the GDA will be simplified so construction funding is available when needed and conditions for each individual element are fulfilled.
34. Mitigation measures are being put in place including close monitoring of the programme timescales and finances especially the activities that are influenced by third parties.

## Consultations

35. Consultation has taken place with the Director of Law & Governance, Director of Finance, Cabinet Member for Travel and Development Strategy and Cabinet Member for Finance in direction of negotiations and drafting the Deed of Variation

### Options Considered

36. The outcome of the negotiations does not fully address the request set out in Cabinet of 15<sup>th</sup> March in Homes England excluding the provisions for exceptional circumstances to include the current global economic situation.
37. Three options have been considered:

Options	Details	Risks	Mitigations
Option 1 – no agreement	Cabinet remains committed to mitigating any exceptional circumstances due to the financial risks. The Council will respond	This would not deliver the infrastructure needed to support the housing and provide benefits to the local communities in the Didcot area. (Several housing developments have been	Allow the 12,866 houses to come forward without the infrastructure. Seek agreement with the Local Planning Authorities for early adoption of new policies and standards

	to Homes England saying if the provisions cannot be changed, the Council will no longer proceed with the HIF1 scheme.	granted permission on the proviso that HIF1 is coming forward.) This decision will open the Council up to challenge. This would also impact the reputation of the Council and potentially impact future government funding.	including enhanced public transport with appropriate funding. Seek agreement from developers to avoid planning by appeal and costs to the council.
Option 2 – pause for further negotiation	To pause the HIF1 scheme to allow further discussion with Homes England, Department for Levelling Up and HM Treasury until the issues are resolved	This is unlikely to result in any material change and would cause pressure on delivery of the scheme by the agreed March 26 end date. This would require a further negotiation on the availability period date with HMT, and further delay the infrastructure required in the area, and indications are this would not yield any additional support/ changes.	Continue negotiations with Homes England and DLUC and HMT.
Option 3 – proceed with the revised GDA	Agree to the changed scheme description and GDA amendment to amend time, budget and changes to the phasing of release of funding. Seek a further letter of comfort from DLUHC that in the case of exceptional circumstances, Homes England will support in facilitating discussions with HM Treasury.	Changes to the agreement, outlined in Risk section of the report will mitigate the financial risk but not as fully as Cabinet had sought. The letter of comfort will not have legal basis but be a commitment from Government.	Continued dialogue with Homes England. Continued review of the programme and risks throughout the project lifecycle. Engage the Government Infrastructure Project Authority (IPA) to bring industry expertise and advice where required. OCC will retain the option to stop the project at key decision points to manage financial risk (without clawback).

14. Recommendation is that Cabinet agrees to Option 3, where the GDA is signed with amendments regarding the increase of time, budget, phasing of elements and adjustments to the scheme description to allow further changes in line with the Councils priorities and request a letter of commitment from Government.
15. It is recommended that a letter should be written from the Council Leader to Homes England and Department of Levelling Up stating that the Council is committed to delivering the HIF1 Didcot scheme, but the Council is capping its contribution and should any of the schemes in the programme put a risk on the council that will result in the cap will be exceeded then there would be an

expectation that the escalation clauses would be invoked and if necessary work on the scheme stopped until the risk was removed.

Owen Jenkins, Director Transport and Infrastructure

Annexes (Exempt):            Annex 1 – Change Request approval letter

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June 2022

By virtue of paragraph(s) 3 of Part 1 of Schedule 12A  
of the Local Government Act 1972.

Document is Restricted

- (i) **Approve the draft Oxfordshire Enhanced Partnership Document (attached as Annex 1) for submission to the Department for Transport.**
- (ii) **Consult on the draft Enhanced Partnership Document with all Oxfordshire Bus Operators, for the statutory 28 objection period.**

## **85/22 EXEMPT ITEMS**

(Agenda Item. 16)

It was agreed that there was no need to go into private session.

## **86/22 HIF1 GRANT DETERMINATION AGREEMENT**

(Agenda Item. 17)

Cabinet had before it a report outlining the renegotiated position and options considered as requested by the meeting of Cabinet in March.

Before considering the report the Chair agreed to hear the following speakers:

Richard Harding emphasised that reducing car traffic was an important part of all local and central government policies in order to reduce carbon emissions. Studies had shown that by-pass schemes generally result in more traffic than predicted and ultimately fail to even reduce traffic in the town centres. He believed that this plan would induce more traffic and result in demands to link to the M40. He asked that the scheme be paused while the administration considered how to transition to a low carbon future.

Gregory O'Broin, Chair of Appleford Parish Council and the Neighbouring Parish Council Joint Committee, stated that all five Parish Councils in the Joint Committee strongly opposed this road. HIF was a solution from an earlier decade. It was not necessary to deliver housing and there were alternative infrastructures available. The HIF scheme was not designed to promote sustainable modes of travel and it will not improve air quality or reduce CO2 emissions. He asked Cabinet to pause and consider alternatives.

Chris Hancock stated that the current estimated cost of £294m for this road was the highest expenditure of 31 future HIF1 schemes in the UK and one of the most expensive per new home realized. It could be anticipated that the three bridges could approach 1/3 of the total scheme cost whereas redesigned bridges to a reduced scale to support a dedicated busway with lightweight cycleway/footpath bridges alongside could be constructed at less cost and with much less risk.

Councillor Robin Bennett, Berinsfield & Garsington, recognised that this was a legacy project. He supported the letter to Highways England making clear opposition to any kind of East-West expressway. However, this project

risked locking in car dependency. It was not fully funded requiring borrowing by the Council which was already under all kinds of funding pressures. He would not be minded to proceed as the government had not given sufficient assurance.

Councillor Charlie Hicks stated that there was a high risk of this project becoming a financial black hole. Inflation at current rates was likely to add £30m to the costs. Policies on transport were changing and new roads would shortly be consigned to the history books. These houses were for future generations and each generation drives less. There were alternatives in rail and active travel and providing more facilities locally and he asked Cabinet to explore those.

Councillor Ian Middleton suggested that Cabinet call the government's bluff on this project and let them build the roads if that's what they want. It was a most controversial project and the Council will be held responsible. It was at odds with everything the administration stood for. The government was calling for more climate friendly development so there was an opportunity to pause this project and examine alternatives.

The Chair noted the letter from Homes England included in the latest Addenda in which they made it clear they were open to rescoping projects.

Councillor Duncan Enright, Cabinet Member for Travel & Development Strategy, responded that the existing infrastructure in the Didcot area was inadequate. The high traffic levels could not be reduced without this route. The project had the support of Didcot Town Council and the District Councils. It will be possible to reduce the embedded carbon and the roads will be highly capable for active travel and buses. The County Council had built a very strong relationship with Homes England and through them could access the Department of Transport and the Treasury. He would not rest until there was an exemplar scheme in place.

Councillor Calum Miller addressed the financial concerns. He was pleased to say that officers had succeeded in securing an increase in the funding envelope as well as an extension of the period in which funds will be made available. He noted that 25% of the cost was already allocated to contingency and risk. OCC will retain the option to stop the project at key decision points to manage financial risk without any clawback of funds by Homes England. He was content that measures had been taken to reduce the risk and was happy to support the project. He asked the Leader to respond to the Homes England letter reflecting the concerns expressed in this debate and to emphasise that £30m really was the limit on what the Council can provide.

Councillor Pete Sudbury outlined why he would abstain on the vote while accepting collective Cabinet responsibility. Climate change was accelerating and the UK's own climate committee had said that we were falling ever further behind on emissions. He was concerned that the evidence base for the project involved studies of towns and cities at least three times the size of

Didcot that did not have the same problems. Modal shift was much harder in semi-rural areas with lower concentrations of population. Cultural norms that lie behind travel patterns were hard to shift. It will only happen if we ruthlessly prioritise the modes we want people to use. His reasons for abstaining were that he did not believe that the Council should be putting £30m of its own capital into the scheme. It should be put into climate adaptation. He was also not sure that the Council would have the confidence to be as ruthless as it needed to be to get the level of modal shift.

Councillor Tim Bearder outlined why he could not support the scheme. He stated that all of the other policies of the Council were aimed at radically reducing motor traffic but yet this project was creating a whole new network of roads. The project was already £70m over budget before construction even started. It was believed that construction costs of other projects had increased by up to 25%. It was built on a car-dependent model which could facilitate further road building and the Council could not stop Highways England from stepping in. A paradigm shift was needed and this was not it.

The Chair concluded the discussion stating that she was confident that the work done by officers, Cabinet Members and the Cabinet Advisory Group had resulted in a scheme very different from that approved by the previous administration.

The recommendations were proposed by Councillor Enright and seconded by Councillor Miller. The proposal was passed with 8 votes in favour, 1 against and 1 abstention.

**RESOLVED to:**

- a) **Approve the amendments to the Grant Determination Agreement (GDA)**
- b) **Seek an additional letter of comfort from Homes England and Department of Levelling Up, Housing and Communities (DLUHC).**
- c) **Authorise the signing of the Grant Determination Agreement by the Director for Transport and Infrastructure, in consultation with the Director of Law & Governance, Director of Finance, Cabinet Member for Travel and Development Strategy and Cabinet Member for Finance.**

**87/22 HIF 2 SMART CORRIDOR – AMENDMENT OF GRANT DETERMINATION AGREEMENT / DEED OF VARIATION**

(Agenda Item. 18)

Cabinet considered changes to the HIF Grant Determination Agreement (GDA) agreed in principle, between Oxfordshire County Council and Homes England, which include: