



**CABINET – 22 JUNE 2021**

**MELTON MOWBRAY DISTRIBUTOR ROAD SOUTHERN SECTION –  
HOUSING INFRASTRUCTURE FUND GRANT**

**REPORT OF THE CHIEF EXECUTIVE, DIRECTOR OF CORPORATE  
RESOURCES AND DIRECTOR OF LAW AND GOVERNANCE**

**PART A**

**Purpose of the Report**

1. The purpose of the report is to advise the Cabinet that the County Council is not in a position to accept the Housing Infrastructure Fund (HIF) grant offered by Homes England (HE) in respect of the southern leg of the Melton Mowbray Distributor Road (MMDRS).

**Recommendations**

2. It is recommended:
  - a) That the Cabinet notes:
    - i. that the County Council has offered to take the vast majority of the funding risk associated with the construction of the Southern section of the Melton Mowbray Distributor Road;
    - ii. but that it has not been possible to reach an agreement with Melton Borough Council on mitigating the risks to the County Council if the costs of education infrastructure required for the residential development enabled by completion of the Southern section of the Melton Mowbray Distributor Road were not fully met.
  - b) That consequently, Homes England be advised that the County Council is unable to accept the Housing Infrastructure Fund Grant offered in respect of the Southern section of the Melton Mowbray Distributor Road.

### **Reason for Recommendations**

3. There is too great a financial risk to the County Council if the HIF grant were to be accepted. It has not been possible to reach an agreement with Melton Borough Council (MBC) whereby the Borough Council mitigate that risk.

### **Timetable for decisions (including scrutiny)**

4. The extended deadline set by HE of 31 March has passed. Subsequent discussions have taken place with HE, the Ministry of Housing, Communities and Local Government (MHCLG) and MBC. A decision on the HIF grant offer now needs to be taken.

### **Policy framework and previous decisions**

5. In November 2019 the Cabinet was advised of a successful HIF bid of £15m for the MMDRS.
6. In March 2020 the Cabinet considered a report on MBC's master planning for the Melton South Sustainable Neighbourhood (MSSN). This detailed possible implications for the County Council, including financial risk connected to the acceptance of the grant offer from MHCLG and HE towards the cost of the MMDRS.
7. In June 2020 the Cabinet considered a report on the latest position with regard to the HIF grant offer and the decision by MBC to approve a masterplan for the MSSN. The Cabinet raised a number of concerns, most notably that the masterplan did not demonstrate the financial viability of the MSSN. The Cabinet also noted that the masterplan was approved despite it containing unresolved errors and inaccuracies which had been raised by the County Council.
8. In December 2020 the Cabinet was advised of work led by the County Council in collaboration with landowners and developers, which showed the MSSN was capable of being financially viable. That was dependent on the approved masterplan for the MSSN being revised. The Cabinet resolved inter alia that, subject to an agreement with MBC on mitigating the financial risk to the County Council and to the completion of other necessary agreements, authority could be given for the County Council to enter into a Grant Determination Agreement (GDA) with HE in respect of the HIF grant. The Cabinet also noted that MBC were seeking to cap any agreement at an amount which was not considered substantial enough. In a report to MBC's Cabinet in November 2019 a figure of £6m had been identified. More recently, the figure was reduced in discussions to £1m (paragraph 22) and then £800,000.

### **Resource implications**

9. The current estimate for the cost of the MMDRS is £35m. The HIF grant award would be for a sum of just short of £15m. This would leave a requirement for the County Council to forward fund the balance of £20m. In addition, around

£35m of education infrastructure (in addition to land) would be needed to fund new school provision arising from the residential development, which completion of the MMDRS would enable. This means the County Council would be requiring contributions of around £55m to come from developers using a combination of s106 agreements and Highways Act agreements.

10. The current viability appraisal, based on a draft updated masterplan produced by the County Council, suggests that there is a reasonable chance that the £55m would be fully recoverable from developers as the enabled sites are built out, but over a period of up to 20 years. However, there are significant risks associated with forward funding infrastructure and recovering costs at a later date as development comes forward, including:
  - The proposed housing stalls for commercial reasons, after the upfront infrastructure is provided and so developer contributions are never received, or the timescales for recovery lengthen substantially.
  - Decisions on s106 funding will be made by MBC, which may decide to prioritise other infrastructure, or agree to reduce contributions based on matters relating to viability or interpretation of Community Infrastructure Levy (CIL) regulations. It is noted that MBC are preparing s106 developer contributions supplementary planning guidance.
  - The viability of the development (and hence the level of developer contributions forthcoming) is subject to significant uncertainty and in addition to infrastructure costs it is affected by market conditions (such as build costs, land values and house prices) as well as affordable housing mix and tenure and other factors outside the County Council's control.
  - The longer the timescales to build the development, the increased risk of these other factors affecting the scheme.
  
11. The additional financial risks this presents need to be considered alongside the commitment the County Council has already made in relation to the Northern and Eastern section of the MMDR. The original bid submitted for the Department for Transport Local Authority Majors Fund was based on a cost of £63.5m. With a grant of £49.5m this left a minimum of £14m to be forward funded by the County Council. Taken with the £22m of education infrastructure required for the Melton North Sustainable Neighbourhood, and the fact that latest indications are that the cost of the Northern and Eastern section will be significantly in excess of the original provision, the County's financial position is becoming increasingly stretched.
  
12. Furthermore, the infrastructure demands that are emerging from other district councils' local plans will exacerbate this financial pressure. As such, committing to fund the development of the MMDRS, even taking into account the HIF funding available, would see the County Council's exposure to financial risk within one of its smallest district areas being at such a level that it compromises its ability to invest in other parts of the County.

**Circulation under the Local Issues Alert Procedure**

This report has been circulated to members representing electoral divisions in the Melton area: Mr M Frisby CC, Mr B Lovegrove C, Mr J Orson CC, Mrs P Posnett MBE CC.

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## **PART B**

### **Background**

13. Melton Mowbray is identified as a 'Key Centre for Regeneration and Growth' in the 2018 Leicester and Leicestershire Strategic Growth Plan. The Melton Local Plan (formally adopted in October 2018) and which the County Council supports sets out that the majority of the housing development for Melton will be delivered within two new large-scale sustainable neighbourhoods, south and north, known as the MSSN (Policy SS4) and the MNSN (Policy SS5). The MMDR has been seen as an orbital road which alongside a Melton Mowbray Transport Strategy would facilitate the development of both sustainable neighbourhoods.
14. In Cabinet reports, however, it has been made clear that there would be a significant financial risk to the County Council, particularly in forward funding the high cost of the required infrastructure to ensure the success of the sustainable neighbourhoods as new communities.

### **Current Position**

15. Following discussions with MHCLG, HE and MBC in January 2021, and in order to make progress, the County Council proposed a way forward as follows:
  - The County Council would agree to forward fund the MMDRS. The expectation would be that these costs would be reimbursed through s278/s38 agreements under the Highways Act 1980 and any outstanding shortfall through prioritised payments under s106 Town and Country Planning Act 1990 agreements.
  - MBC would accept it is appropriate in the event of the s106 funding for educational requirements not being secured in line with what had been requested, that MBC would underwrite any shortfall. This would be done through an agreed schedule linked to the phasing of housing delivery, trigger points for school construction and when costs are incurred, e.g. with 5-year milestones over a 15-20 year period.
  - An agreement would be drawn up between the County Council and MBC to capture heads of terms to cover the County Council's requirements which would also contain appropriate provisions should any significant and relevant planning reforms arise after the agreement was completed.
  - The County Council's proposal would also recognise the responsibilities of developers, including landowners and promoters, and the requirement for them to enter into the necessary s106 and Highways Act agreements. (The proposal was also shared with the developers.)

16. By agreeing to take on responsibility for the forward funding of the road infrastructure, the County Council was demonstrating a commitment to take the vast majority of the funding risk, with the risk to MBC minimised and largely within its own control.
17. The County Council was making a commitment in respect of funding the whole road infrastructure at the outset, before housing development was on-line, a commitment of c.£20m (£35m gross costs less HIF Grant).
18. In contrast, the education infrastructure costs can be broken down into blocks, with the requirement to progress the construction of each new school or school expansion being linked to trigger points arising from numbers of houses constructed over a long timescale. This has enabled officers to give precision to the education infrastructure provision required via the s106 approach with the development of an amount per dwelling to be built through a planning application approval – the roof tax approach. As such, as each school is committed to, history shows that a large proportion of the funding required is likely to already have been secured through the s106 process, with any outstanding funding still required to be forthcoming through further s106 agreements. Therefore, in respect of the education infrastructure, and, in comparison to road infrastructure, the risks are considerably lower and predominantly within the control of MBC as the local planning authority to mitigate or eliminate.
19. A shortfall would arise if MBC as the local planning authority were to agree through s106 a lower education infrastructure roof tax than that requested by the County Council or in contrast to other developments that have gone before. An example could be where the planning authority might support a viability assessment from a developer resulting in lower contributions, compared to what is required to fund fully the education infrastructure.
20. So, in summary and in the context of a multi-million pound development and the risks to the County Council's finances, MBC was being asked to underwrite only any shortfall which would arise through actions of its own and, even in that eventuality, this could be repaid over a reasonable timescale so that the financial resilience of MBC was not compromised.

### **Discussions with Melton Borough Council**

21. Following the January 2021 discussions (paragraph 15) County Council lawyers prepared a draft Guarantee/Recoupment agreement with MBC to reflect the County Council's requirements and summarised the key provisions in a Heads of Terms document. The Heads of Terms were shared with MHCLG and MBC. Counsel's opinion was also sought on the approach the County Council was taking and the implications in terms of decision making for MBC.
22. Council lawyers exchanged correspondence with MBC's legal team (including external counsel) on the Heads of Terms and meetings took place. As originally drafted, the Guarantee/Recoupment agreement did not have provisions for a liability cap on any MBC financial exposure that might arise.

The discussions that followed revealed that MBC were thinking of a liability cap of £1m which in the Director of Corporate Resources' view did not adequately take into account the comfort the County Council needed given the risk that s106 funding would not be forthcoming, leaving the County Council significantly exposed.

### **Discussions with Homes England**

23. County Council lawyers have also been also involved with HE's external lawyers and HE officers about the requirements of a GDA. This would have to be signed by the County Council as a precondition to the County Council being able to draw down the HIF grant in stages and in compliance with defined "milestones".
24. HE's GDA is an unusually lengthy and complex document and is contractual. It has been drafted to favour heavily the interests of HE. The provisions seek to deliver upon Government priorities around new housing and infrastructure. The quid pro quo for the receipt of HIF funding is that most of the contractual risks for the delivery of the project would be borne by the County Council. Attempts to negotiate amendments to the terms of the GDA were met with significant resistance by HE's external lawyers. For example, whilst noting that the County Council does not have a statutory function in relation to housing, it would nevertheless have been required to ensure that all housing output related obligations set out in the GDA were met. Also, a failure to comply with housing outputs (not the responsibility of the County Council) could have seen the County Council having to refund all or part of the HIF grant.
25. The County Council's statutory officers have concluded that when looking at all the issues arising in relation to the MMDRS it was not in the County Council's interests to complete the GDA.

### **Equalities and Human Rights Implications**

26. The MMDRS was identified in the Melton Local Plan as essential for the delivery of the planned growth in the district. The Plan itself was subject to an Equality and Human Rights Impact Assessment. Any future scheme will be subject to further assessment in line with the County Council's policy and procedures.

### **Environmental Impact**

27. An environmental impacts study was carried out as part of the HIF bid development process to inform the WebTAG assessment.
28. An environmental impact assessment (EIA) has been carried out in respect of the Northern and Eastern sections of the MMDR.

**Background Papers**

Report to the Cabinet – 22 November 2019 – Melton Mowbray Local Plan Delivery Partnership – HIF Bid Update

<http://politics.leics.gov.uk/ieListDocuments.aspx?CId=135&MId=5608&Ver=4>

Report to the Cabinet on 24 March 2020: Melton Mowbray Distributor Road -

<https://bit.ly/2zogPjT>

Report to the Cabinet on 23 June 2020: Melton Mowbray Distributor Road

<http://politics.leics.gov.uk/ieListDocuments.aspx?CId=135&MId=5996&Ver=4>

Report to the Cabinet on 20 November 2020: Melton North Sustainable Neighbourhood Draft Masterplan:

<http://politics.leics.gov.uk/ieListDocuments.aspx?CId=135&MId=5999&Ver=4>

Report to the Cabinet on 15 December 2020: Melton Mowbray Distributor Road (South) and Melton Northern Sustainable Neighbourhood Draft Masterplan:

<http://politics.leics.gov.uk/ieListDocuments.aspx?CId=135&MId=6000&Ver=4>