

## **CABINET – 15 OCTOBER 2019**

### **MARGINAL VIABILITY HIF FUNDING AGREEMENT & IMPLEMENTATION AGREEMENTS - NW BICESTER**

**Report by Director for Planning & Place**

#### **RECOMMENDATION**

1. **The Cabinet is RECOMMENDED, subject to the confirmation of Cherwell District Council's willingness to enter into a legal agreement for the recovery of funding, to authorise the Chief Executive in consultation with the Leader of the Council to:**
  - (a) **approve any final detailed amendments of the drafted Funding Agreement.**
  - (b) **approve the Funding Agreement.**
2. **Subject to 1, authorise delegation for the approval of the Implementation, Property, Maintenance and Access Agreements for the delivery of the rail bridges to the Director for Planning & Place in consultation with the Leader of the Council.**
3. **Subject to 1, agree the inclusion of the funding of £6.7m into the Capital Programme for this project subject to the implementation of the funding agreement.**

#### **Executive Summary**

4. Cherwell District Council (CDC) has been successful in bidding for Government Marginal Viability Housing Infrastructure Fund (MVHIF) money to support the north west Bicester housing allocation. This funding has been specifically provided to fund the construction of a new rail-over-road bridge that is required to facilitate the realignment of the A4095 in the vicinity of Howes Lane and Lords Lane, Bicester. The whole realignment was allocated as a Housing and Growth Deal scheme and therefore as Oxfordshire County Council (OCC) is now leading on the delivery of much of the realignment CDC has requested that OCC take forward the delivery of the MVHIF infrastructure.
5. The need to make use of an Easter 2021 four-day railway track closure window is driving the delivery of the project as Network Rail have indicated that this is very likely to be the only opportunity they can provide before the completion of HS2. This placed a significant risk to the delivery of the project whilst also ensuring that a successful project could be delivered quickly. Discussions led by OCC in liaison with CDC are nearing completion to agree a Funding Agreement with Homes England. There are also a range of operational agreements that are also required to take forward delivery.

## Introduction

6. In 2017 the Government announced a funding opportunity under the title Housing Infrastructure Fund. There were two calls, one for smaller sums available to second tier authorities (Marginal Viability Housing Infrastructure Funding - MVHIF) and a larger funding stream available to County Councils (Housing Infrastructure Fund- HIF). CDC bid for MVHIF for the rail bridge to allow the realignment of the A4095 at Howes Lane. The realignment of the A4095 is required to overcome the capacity constraint at the existing junction of Bucknell Road and Howes Lane, to facilitate development at North West Bicester, a mixed-use development including up to 6000 homes pursuant to Policy Bicester 1 of the Cherwell Local Plan 2015 and wider growth within the local area. An extract of the approved masterplan for NW Bicester is included in Annex A.
7. To resolve the existing junction constraint at Howes Lane and Bucknell Road it is necessary to build both the new road and the rail bridge, the total cost of which would have exceeded the maximum MVHIF funding bid (£10m). The bid made therefore sought the cost of the bridge works only (£6.7m). This decision was based on trying to improve the viability of the NW Bicester development by working with Network Rail to address the more complex delivery of the rail bridge. Further funding is being sought to enable the forward funding and delivery of the road and underpass to unlock the site. The full funding required is not yet secured.
8. The funding bid was successful as Homes England offered CDC the £6.7m to construct the rail bridge. By the time of the funding agreement negotiations however OCC were taking the lead on the delivery of the rail bridge using Housing and Growth Deal funding to support the design process. The responsibility for reaching agreement with Homes England on funding terms therefore transferred to OCC as OCC would be incurring the expenditure to construct the bridge.
9. CDC is taking a report to their Executive on 7 October 2019 seeking authorisation to enter into a legal agreement with OCC to seek to recover funding towards the cost of delivery of the A4095 infrastructure. This would follow OCC entering into the Funding Agreement with Homes England.
10. The funding agreement has a number of requirements and two of these in particular need careful consideration and these are considered further below.

## Report Details

11. The MVHIF funding agreement is a standard template agreement with standard clauses. The agreement raises two important issues, the need to meet milestones throughout the construction phase and the need to seek to recover contributions from development for the infrastructure that has been forward funded, thereby freeing up the grant money to then more directly help to deliver housing as Homes England require.

12. Further agreements will need to be in place for the delivery of the rail bridge and underpass required for the A4095 realignment. It is intended that Network Rail will deliver the scheme because it is on their land, they manage the possession needed to close the railway and they have a wealth of experience in construction of railway bridges in very tight time constraints. Delegated approval is sought to enter into these agreements as a part of meeting the challenging delivery programme for the bridges. These agreements include:
- An implementation agreement with Network Rail (for the construction by Network Rail of the bridges using one of its framework construction contractors).
  - A property agreement with Network Rail (regarding the Council's right as highways authority to construct the road and pedestrian/cycle route under the bridges and their dedication for adoption by the Council as highway maintainable at public expense).
  - An agreement with Network Rail covering future maintenance of the bridges and commuted sums payable by the Council to cover this maintenance.
  - Access rights granted by adjoining landowners for the construction and subsequent maintenance of the bridges until such time as the new road and pedestrian/cycle route have been constructed.
13. The programme for delivery is tight due to the need to use the Network Rail track possession booked for Easter 2021 to install both structures. Therefore, there is a critical timeframe for delivery and any slippage will cause a disproportionate delay as another track possession may not be available for perhaps 10 years due to HS2 currently holding all possessions.
14. Any delay or failure to sign the funding agreement or the implementation agreement and its associated agreements would cause significant risks on the delivery of the infrastructure to time and budget.

### **Process to Secure Funding and Delivery**

15. Subject to Cabinet approval, the process to secure funding will take the following route:
- (a) Complete the Funding Agreement (indicatively October 2019)
  - (b) Complete the Implementation Agreement (indicatively November 2019)
  - (c) Possession booked (Easter/April 2021)
  - (d) Completion of works (July 2021)

## **Financial and Staff Implications**

16. There are some financial risks in signing the MVHIF agreement due to the default clauses in the agreement and the third-party delivery by Network Rail. These risks are being reduced as far as practical through ongoing negotiation with Homes England. Remaining risks will be mitigated as far as possible but are not considered to be disproportionate for a scheme of this scale and nature.
17. The MVHIF money for the rail-over-road bridge is only part of the funding needed for the A4095 realignment scheme. There is also Housing and Growth Deal (HGD) and s106 funding supporting the delivery of the underpass and road which are also required to complete the realignment. If the MVHIF funding was no longer available then HGD funding, subject to approval, could be diverted to finish the delivery.
18. The Network Rail Implementation Agreement is with Network Rail's implementation arm of their organisation. The agreement covers the construction at an estimated price for implementation that includes a risk allowance of approximately 18%. Part of the payment to Network Rail also includes an industry insurance to cover low probability, high impact risks specific to rail industry conditions.

## **Equalities Implications**

19. This report recommends delegating authority to sign a grant determination agreement with Homes England subject to negotiations around conditions and mitigation of financial risk. The equalities implications of the scheme which become the accountability of the County Council will be assessed in the normal way as the detail of the scheme is brought forward.

## **Legal Implications**

20. Throughout the contract negotiations, the County Council's Legal Team has been involved and has advised officers and this has informed the negotiation of the Funding Agreement to date. Homes England and the County Council will be responsible for their own legal costs although these may be recouped post-contract as a capital receipt.

## **Programme and Project Risks**

21. Number of project risks have been identified across the project, the most significant of which are as follows:
  - (a) Financial implications are still being assessed as a part of the ongoing negotiations with Homes England as mentioned in paragraph 16 above.
  - (b) Possession cancelation by Network Rail for wider railway maintenance and strategic schemes. Insurance will be in place to mitigate the financial

loss but any resulting programme delays will be totally dependent on the availability of a future possession.

- (c) Network Rail's Implementation Agreement requires OCC to accept liability for any Network Rail costs arising due to the existence of the bridge that are not covered by insurances or the commuted sum paid to cover routine maintenance and renewal costs. The financial risks to OCC are considered low in this regard as the most likely triggers to require payment for modification or reconstruction of the bridge or underpass are likely to be major rail projects such as electrification or the widening of rail corridors, rail scheme which have all tended to be centrally funded and therefore would not fall to OCC to contribute to (unless required as part of central funding arrangement).
- (d) Network Rail's Implementation Agreement requires OCC to cover the costs of construction of the bridges under certain heads of cost and the outturn cost is uncertain. Estimates and costing information should be examined carefully ahead of entering into the Implementation Agreement.
- (e) Working within the constraints of a railway environment and under the very tight time constraints of a single 100hr track possession; mitigation is sought by procuring the works through Network Rail who operates the track in question and by using one of their framework contractors who is experienced in constructing these sorts of structures in a time limited railway track possession.
- (f) The arrangements for construction of the underbridge and underpass are not yet in place. The construction contract needs to be awarded and there is land that needs to be temporarily secured that is in third party ownership. It is intended that the implementation agreement for construction will be based on a Network Rail standard template. The bridges themselves will both be located on Network Rail owned land. The third-party land required for temporary construction access and site compounds is all privately-owned. Contact has been made with all landowners involved and negotiations are ongoing.
- (g) Construction of the road is contingent on the land it requires being secured from private land owners. Contact will be made with owners of land required for the road when its design has been sufficiently developed.
- (h) At present there is not enough Growth Deal Funding allocated to fund the road construction. Therefore, there is also a need for developers to come forward and progress their planning applications which will include constructing elements of the road/funding the construction of the road [once the underbridge is in place]. Encouragement of developers will be a role for Cherwell District Council to lead.

## **Decisions required**

22. As set out, there is a compelling case for infrastructure investment in NW Bicester. It has been demonstrated that funding from Homes England is required in order to resolve existing viability issues to enable and facilitate the delivery of up to 6,000 homes across the development site. It is anticipated that CDC through agreeing to enter into a back-to-back legal agreement with OCC, will agree to OCC leading the delivery of the rail underbridge as a part of the realignment of A4095 in NW Bicester.
23. There are several matters included within the draft Funding Agreement which relate to the successful programming and delivery of the infrastructure and which have financial and reputational risks to the Council. Whilst important, these are not considered to be disproportionate to the scale of project and can be appropriately managed through the Council's governance procedures.
24. There remain matters to be concluded prior to finalising the Funding Agreement, however at this stage these are not considered to be insurmountable and are subject to CDC confirming their willingness to enter into a back-to-back legal agreement. It is proposed that authority be delegated to enter into the Funding Agreement with Homes England once discussions on the outstanding matters are concluded.
25. In addition, there are also a range of further Agreements required to carry forward the operational delivery of the project. These are considered standard agreements for the delivery of infrastructure on third party land within a rail environment. Delegation is therefore sought to expedite these agreements to meet the demanding delivery programme.

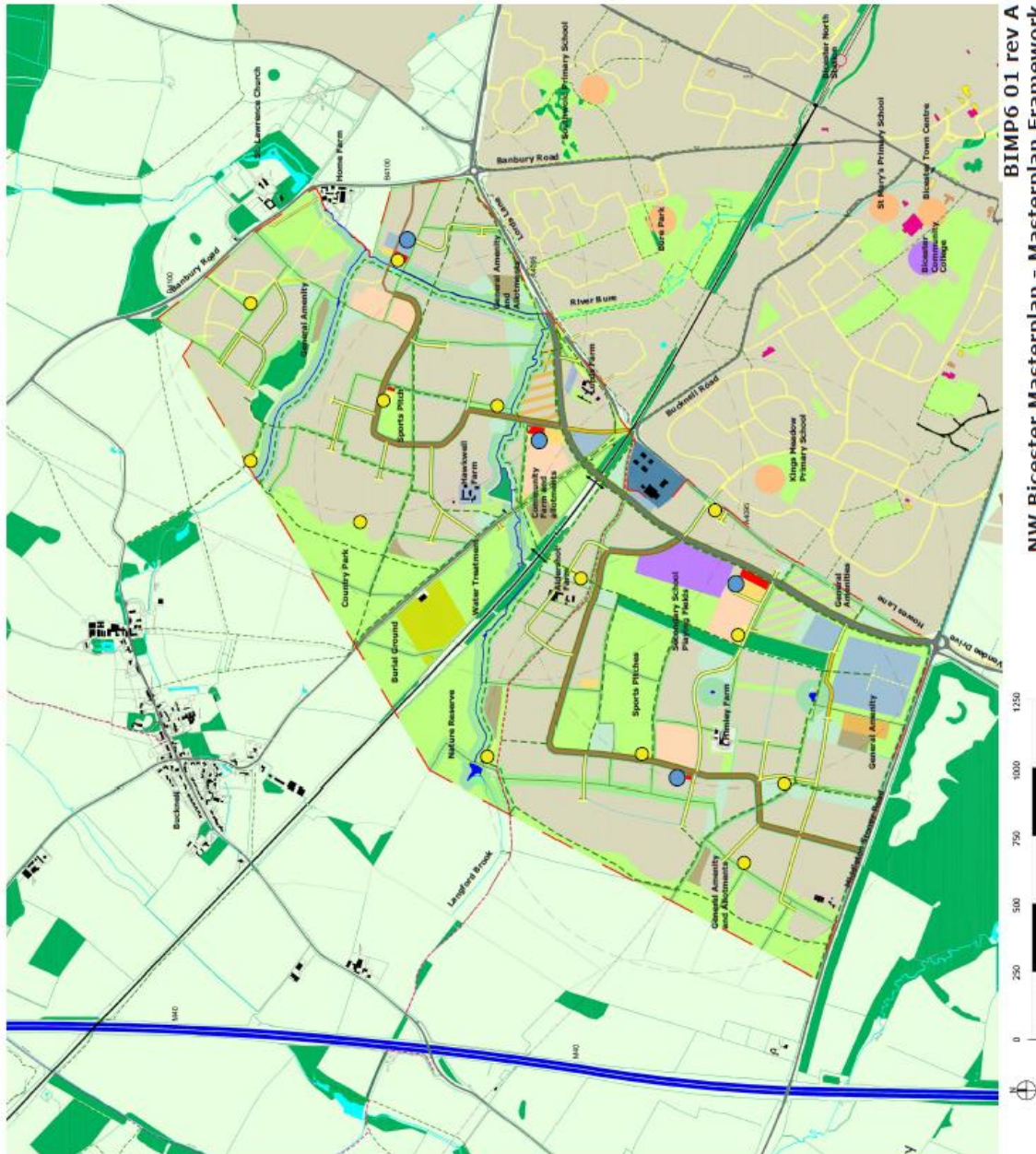
SUSAN HALLIWELL  
Director for Planning and Place

Background papers: None

October 2019

# Annex A

## Extract of the Approved Masterplan for NW Bicester



BIMP6 01 rev A  
NW Bicester Masterplan - Masterplan Framework

FARRELLS

- Masterplan Site Area
- Proposed NW Bicester Land Use**
- Green Infrastructure
- Existing Woodlands and hedgerows
- Existing Water Corridor and Ponds
- Proposed Woodlands and Hedgerows Buffer
- Proposed Water Corridor Buffer Zone
- Housing
- Primary School
- Secondary School
- Secondary School Sports Pitches
- Existing Business (including green space tbc)
- Existing Farm Use (including green space tbc)
- Commercial/ Business
- Social/Community
- Retail
- Care Home/Hotel/Other
- Extra Care Housing (including green space tbc)
- Energy Centre
- Water Treatment
- Proposed Retention Basins and Attenuation Ponds
- Proposed Swales
- Existing Herbage
- Play
- Proposed groups of allotments
- Proposed Connectivity**
- Strategic Roads with segregated footpath/cycleway
- Primary Roads with segregated footpath/cycleway
- Secondary Roads including footpath/cycleway
- Off road footpath cycleways
- Crossing under railway
- Existing Bridle Path