

Division(s):

CABINET - 21 JULY 2020

WEST OXFORDSHIRE (A40 SMART CORRIDOR IMPROVEMENTS) HOUSING INFRASTRUCTURE FUND (HIF2)

Report by Corporate Director Planning & Growth

Recommendation

- 1. Cabinet are RECOMMENDED to: -**
 - (a) Subject to the confirmation from Homes England that the contract pre-conditions have been met and due diligence has been completed to manage programme and financial risk to the Council, authorise the Chief Executive, in consultation with the Leader of the Council and the Cabinet Member for Environment to:**
 - i) approve any final detailed amendments of the drafted Heads of Terms.**
 - ii) approve the Grant Determination Agreement (GDA).**
 - (b) Subject to the satisfactory completion of recommendation (i) approve the inclusion of all three elements (identified in para. 4 and Appendix 1) of the programme into the Capital Programme and report the governance of these projects at a HIF2 programme level with an overall budget provision of £102m subject to the implementation of the grant determination agreement with Homes England.**
 - (c) Note the draft Heads of Terms (Annex 1) that form the basis of grant determination agreement between Homes England and Oxfordshire County Council for West Oxfordshire Housing Infrastructure Fund Grant Award.**
 - (d) Note the Assurance Framework (explained in para 27) which sets out the background to the Housing Infrastructure Funding process and establishes the approach to reporting and monitoring implementation.**

Executive Summary

2. Oxfordshire County Council (OCC) submitted a business case for HIF2 in March 2019. In November 2019 it was announced that the bid had been successful (subject to contract) in securing £102m of grant funding towards a forecast £153.2m package of transport improvements proposed along 10.8km the A40 corridor between Witney and Duke's Cut (North Oxford).
3. The HIF2 will not only expediate infrastructure delivery but directly unlock 4,813 new homes (including 2,222 affordable homes) and support the delivery of more than 10,000 new homes in total in the West Oxfordshire area committed through the Local Plan 2031. HIF2, in conjunction with the County Council's wider transport strategy, is required to resolve current severe congestion and future-proof the highway infrastructure along the A40 corridor in the long term.
4. A schematic plan of the A40 corridor's programme and its related housing is included at Appendix 1. In summary, the HIF2 scheme includes three key highway enhancement elements:
 - a) Element 1: A40 dual carriageway between Witney and Eynsham (3.2km)
 - b) Element 2: A40 westbound bus priority lane (7.0km)
 - c) Element 3: A40 capacity and connectivity Improvements at Duke's Cut canal and railway bridges (0.6km).
5. The related Science Transit scheme (Local Growth Funded, DfT) includes:
 - a) Park & ride at Eynsham
 - b) A40 East bound bus priority Lane.
6. The primary focus of HIF2 is the provision of additional highway space, connectivity and infrastructure to encourage/facilitate modal shift encouraging more sustainable forms of travel to meet our zero carbon transport network ambitions such as public transport, walking and cycling connectivity, and the delivery of wider health and place shaping benefits in line with the Council's key priorities.
7. HIF2 funding will add to the £36.2m of Local Growth Funding that has been secured from the Department of Transport and Developers towards the first phase of the package of A40 corridor improvements. This phase known as Science Transit is interdependent with the delivery of HIF2. There is currently an estimated funding gap to deliver the Science Transit Scheme, although it is anticipated that this will be resolved in the coming months through securing additional funding sources and efficiencies in the programme. Further detail is outlined in para 32 and detailed in Annex 2

8. There are a range of current issues and risks associated with the delivery of the A40 corridor programme which are being actively managed. Whilst a number of these can be considered as reflective of the scale and complexity of the programme being undertaken, matters such as HIF2 contract conditions and the interdependence between the Science Transit and HIF2 projects are of particular note.
9. The grant funding will need to be spent by March 2024. Since the funding announcement, OCC has been in negotiations with Homes England (on behalf of MHCLG) regarding the HIF2 Heads of Terms and the draft Grant Determination Agreement (GDA). Contract discussions are proceeding well, with much of the detail resolved through the HIF 1 discussions. This potentially allows OCC to enter the HIF2 contract in August 2020.

Background

10. The A40 Smart Corridor is the second phase of the overarching A40 Strategy. The scheme includes three key highway enhancement elements:
 - a) Element 1: A40 dual carriageway between Witney and Eynsham (3.2km)
 - b) Element 2: A40 westbound bus priority lane (7.0km)
 - c) Element 3: A40 capacity and connectivity Improvements at Duke's Cut canal and railway bridges (0.6km)
11. The HIF scheme will mitigate the increased transport demand generated by housing growth by increasing the highway capacity of the route between Witney and Eynsham, while providing a high-quality, congestion-free public transport alternative for travel between Eynsham and Oxford. Interchange would be made possible at Eynsham Park & Ride, part of the A40 Science Transit 2 Scheme.

A40 Smart Corridor Linkages to Housing Delivery and Sustainable Travel

12. Element 1 A40 dual carriageway will extend the capacity increase provided by the existing A40 Dual Carriageway (Witney Bypass) further east from Witney to Eynsham. Witney is the largest town in West Oxfordshire and a key retail and services destination for neighbouring settlements. This element directly supports housing growth at Site 1 North Witney and Site 2 East Witney. Widening the single carriageway to dual carriageway will significantly increase highway capacity for all modes of transport and provide access to the transport interchange hub at Eynsham Park & Ride site, where fast bus services to Oxford city centre, Oxford Hospitals and key employment sites can be accessed. This Element also provides more capacity for local trips between Witney and Eynsham, including a shared pedestrian and cycle lane, which will enable residents at the Eynsham sites

(Sites 3 and 4) to easily access local employment, retail and services in Witney.

13. Elements 2 and 3 provide much needed capacity enhancements and the provision of a congestion free alternative for local traffic on the A40 between Eynsham and Oxford, through improving public transport capacity. Currently, the A40 serves a premium bus route corridor, carrying over 2m passengers per year, the scheme will increase capacity to accommodate growth in passenger trips. The improvements directly serve Site 3 Oxfordshire Cotswold Garden Village and Site 4 West Eynsham. This part of Oxfordshire has some of the highest levels of “out-commuting” in the county, over 20,000 West Oxfordshire residents commute to destinations outside of the District for work, the highest proportion of which at over 7,500 people commute to Oxford City. This means there is a high level of dependency on the A40 corridor, and the HIF proposals, to access a growing job market in Oxford.
14. Elements 2 and 3 complete the dedicated bus lanes in both directions (started by A40ST2) to provide a high frequency, fast and reliable public transport alternative to the car for trips between West Oxfordshire and Oxford. For these benefits to be fully realised, both Elements 2 and 3 need to be delivered together. If only one of these Elements were provided, then buses would be forced to merge with car traffic and share the road with cars for part of their journey between Eynsham and Oxford. This would significantly reduce the attractiveness of the public transport offer, which is why OCC believes both elements are needed to ensure the scheme is viable.
15. In the absence of HIF funding, the four Local Plan Housing sites at Witney and Eynsham, would not be supported by the essential infrastructure to mitigate the transport impact of growth. These homes, and HIF funding, contribute to the Oxfordshire Housing and Growth Deal commitment to support the delivery of 100,000 homes by 2031, without HIF this objective would be placed at risk, as WODC would have to consider the use of planning conditions to halt housing delivery until certainty around infrastructure funding could be secured.
16. A failure to give road users choices of travel and better journey time reliability would lead to County Council objections to planning applications that increase traffic on the A40 corridor in the West Oxfordshire area, most noticeably those which are dependent on the HIF 2 infrastructure. This infrastructure enhances the network whilst providing those wider opportunities for users of the A40 corridors to travel by alternative modes. This in combination with the completion of the Local Transport and

Connectivity Plan, to be adopted in 2021 will strategically manage travel along the A40 corridor moving forward.

17. The four development sites listed in Table 1 were identified as ‘dependent’ on the A40 improvements coming forward. All the dependent sites relate to West Oxfordshire District Council’s (WODC) adopted Local Plan 2031 and benefit from adopted site status. An Area Action Plan is in development for the Oxfordshire Cotswold Garden Village with an examination scheduled in Winter 2020. A development brief for West Eynsham is also in production and is scheduled for completion in August 2020. Both policy documents rely on the HIF 2 infrastructure being secured for support from OCC.

Table 1: HIF2 dependent sites

Site	Site Name	Homes	Current Status
1	Oxfordshire Cotswold Garden Village	2,200	In Planning (Application Submitted)
2	West Eynsham	750	Discussions with developers underway. Not yet in planning
3	East Witney	450	In Planning (Pre-Apps)
4	North Witney	1,400	Partly in Planning (2 live apps)

Progress to date

18. While the contract with Homes England has not been signed there has been significant progress to date. Mobilisation work has started on feasibility design to establish a realistic programme and ensure that the scheme can progress to meet the delivery deadline. The delivery programme for the A40 scheme is challenging although forecasts indicate delivery meeting the March 2024 funding window. However, there remain a number of risks to meeting this deadline which include the Science Transit scheme, further COVID-19 matters, delays in the land acquisition and Compulsory Purchase Order process. The programme will go through a review looking at efficiencies so more time can be made available at the beginning of the programme to mitigate any planning or CPO issues and seek to avoid any expenditure outside of the funding window or cost overruns. It is anticipated the review work will be completed by August 2020. Further detailed impact of the risk is outlined in Annex 2.

19. The main focus of recent activity has, with Homes England and DfT’s verbal agreement, been looking at the most efficient and effective way in delivering the HIF scheme. This has included looking at the Local Growth

Funded (LGF) Science Transit scheme, which forms the first stage of the A40 improvements, to consider if it can be integrated to enhance the overall design solution and provide more effective cost/ operational delivery. At present the HIF2 and LGF schemes are separately funded projects and will be delivered on separate timeframes. Work is underway to demonstrate that there are efficiencies and ways of minimising disruption on this single main arterial road between Eynsham and Duke's Cut by combining the delivery of the projects.

20. All activity along the A40 corridor as illustrated through Appendix 1, is now being taken forward through a co-ordinated approach in terms of resources and delivery approach. Once evidenced that there are clear benefits from integration, these two projects will be taken forward as a single scheme for delivery.

HIF Grant Determination Agreement Negotiations and Implementation

21. Since December 2019, officers have been in negotiations with Homes England on the Heads of Terms for HIF2 which form the basis of the Grant Determination Agreement (GDA) (contract) with Government. The GDA defines each specific project, their funding and what will be delivered and monitored. This has also involved tri-partite discussions with DfT, Homes England and OCC as several conditions (pre and post contract) relate to the Science Transit scheme.
22. A draft GDA was provided to OCC on 26th June 2020. Receipt confirmed that the fundamental elements of the HIF1 GDA drafting was translated to the HIF2 GDA and by default the extent of further negotiations necessary to complete the GDA has been narrowed.
23. The HIF2 Heads of Terms (Annex 1) remain draft and will be finalised with Homes England as part of concluding the GDA. In addition to the general conditions seen in HIF1, conditions and clauses also relate to a successfully submitted LGF bid which is fundamental to the delivery of the HIF2 programme. This presents a risk to the timing of entering the contract and the wider delivery of HIF2, whilst significant these are being managed (see Key Issues below).
24. Another common theme relates to delivery of HIF infrastructure and new homes and their related milestones. In the unlikely event that these key milestones are missed and cannot be renegotiated with Homes England (a general default), or OCC have acted improperly in spending the funding or delivering the infrastructure (a fundamental default), then Homes

England have the ability to stop further payments and in the latter event, clawback the funding already received.

25. The likelihood of a fundamental default occurring is considered extremely low. The likelihood of a general default occurring is also considered low and further mitigation measures can be taken to manage the risk.
26. Implementation of a number of conditions also require a close partnership with West Oxfordshire District Council (WODC) to monitor and ensure delivery of the housing associated with HIF2. Other conditions relate to procurement, land acquisition, planning permissions, funding profiles and mechanisms and a number of general conditions and performance obligations. HIF funding will be available for the period commencing on the satisfaction of the various conditions precedent and until 31st March 2024.
27. Once the GDA has been agreed, its implementation will sit within requirements set through the HIF Assurance Framework. This establishes the checks and balances for HIF projects, providing the necessary oversight and transparency to MHCLG illustrating accountability between local and central government. In addition to setting the background and approach to securing and spending HIF funding, it also includes requirements such as regular reporting, an annual performance review and a robust approach to monitoring and evaluation.

Key Issues

Linkages with the Science Transit scheme funded from Local Growth Fund (LGF)

28. One of the key challenges has been programme delays in relation to the related submission of the Department of Transport (DfT), LGF business case.
29. The A40 Park and Ride and Eastbound Bus Lane scheme needs to gain planning consent prior to the LGF business case submission to DfT. However, there have been delays to the planning process due an objection from the Environment Agency and their requirements for enhanced flood modelling and mitigation along the A40. This has increased the timescales for the planning application determination and has resulted in a delay in the programme.
30. The expected resolution for the EA objection is 3 months once the enhanced modelling has been completed. The technical team are working through the further enhancement options and senior management are engaging with the Environment Agency to see what can be done to release the objection and permission to be granted sooner. Should these

enhancements be accepted it is forecast that the determination of the planning application could occur in March 2021 following submission and further information to the Local Planning Authority.

31. In the meantime, discussions are ongoing with the DfT regarding submission of the business case. DfT recently clarified the approach to be followed to secure funding which has increased both time and submission requirements than those previously programmed. The additional information for the business case is being incrementally submitted and approved in parallel with the planning determination and getting a tender price. This will mean that there will be an agreement on the DfT full business case in principle subject to the planning approval and tender price. The latest estimates indicate that this may be June 2021.
32. A second key issue related to the LGF Science Transit scheme is linked to forecast cost and funding. The cost estimate will exceed the previous outline business case financial forecast by £15m. This is partly due to delays in the determination of the planning application and partly due to the approach used to price the project for the initial business case. Funding to cover the shortfall is being sourced and officers are satisfied that all funding can be sourced from third parties and/or from the OCC capital programme to cover the gap. Alongside funding sources, efficiencies are being looked at through the programme and procurement routes. Further information is outlined in Annex 2.
33. DfT have formally confirmed that Her Majesty's Treasury has extended the funding period for LGF infrastructure programme, which applies to the LGF Science Transit scheme, to March 2022. This is subject to Ministers announcing a positive funding decision on the final business case and, that OCC have entered into contracts to deliver the whole of the scheme.
34. These matters reflect the complexity of delivering a programme of improvements across a single transport corridor using different funding streams from different funders. That said both issues risk delaying entering into the HIF 2 contract with Government and are resulting in financial and programme risk to OCC. The need for the LGF business case to be in place is considered further below.

Draft Heads of Terms and Grant Development Agreement

35. The draft Heads of Terms and GDA are the subject of ongoing confidential negotiations between the County Council and Homes England / Ministry of Homes, Communities and Local Government (MHCLG). An area of

particular focus is to satisfy all preconditions to enable OCC and Homes England/ MHCLG to get into contract as soon as possible.

36. There are a number of key financial matters that require consideration which relate to cashflow, repayment of monies, programme delivery, cost overruns and scheme costs that may unavoidably go beyond post-March 2024. At this time, these are not considered insurmountable.
37. Issues outlined in para. 28 -34 relating to the submission of the LGF business case to DfT are reflected in the GDA. However, through negotiation with Homes England, officers have agreed that the conditions be post signing which will mitigate the risk of not being able to enter into the agreement until the LGF is resolved. Homes England in agreeing to this approach, will only allow draw down of funds following approval of the LGF business case. This point continues to be negotiated with Homes England. An update on this matter can be provided to the meeting.
38. To minimise risk to OCC, officer discussions are progressing positively with senior officers in WODC to put together a back to back agreement with the GDA that will pass any obligations which correspond to the local planning authority relating to securing housing delivery, monitoring numbers of completed houses and HIF funding recovery mechanism which needs to be secured through the planning process. It is understood that WODC will be required in due course to seek member approval to enter into the agreement. This risk will be monitored as discussion progresses with WODC. This activity reflects the wider commitment made by WODC in support of the bid for funding.

Failure to Sign the General Development Agreement

39. Should the HIF2 grant determination agreement not be signed, this strategic infrastructure cannot be delivered. As set out above, the implications arising from this are significantly adverse at both the local, sub-regional and national level. Expediting these discussions are critical to completing negotiations by August 2020.

Programme

40. Due to the strict funding window set out in the criteria for the HIF2 funding, a defined programme and meeting the tight critical paths is paramount. Key milestones will be refined within the programme as greater detail and

certainty is provided. There is currently work underway to consider the integration of the Science Transit scheme and elements of HIF2 which will not only provide time saving, reduce highway network disruption but also provide cost efficiencies. This work is to conclude in August 2020.

41. During programme mobilisation there have been some delays in commencing feasibility design work due to contractual processes, officers have been working through contractual challenges with the supply chain and these have now been resolved to move forward.

42. The interim forecast programmed key milestones are set out in the table below:

Activity	Date
Land access granted for surveys	March 2020
Ecology Surveys	March 2020 – December 2020
Feasibility design	March 2020 – April 2021
Integrated Programme & review completed	August 2020
HIF Funding agreement signed (subject to DfT/HE discussion and OCC approval)	August 2020
LGF Full Business Case information submitted	August -November 2020
Prelim design (incl. other surveys)	March 2021 – August 2021
Detailed design	Dec 2021 – May 2022
Bus Lanes planning application LGF Science Transit 1 (submission / decision)	November 2020 - March 2021
LGF Submission of business case (inc. planning and price)	April 2021
LGF Business case approved	June 2021
Dual Carriageway planning application	June 2021 – Oct 2021
CPO (submission / decision/ JR period)	Aug 2021 – Dec 2022
Construction start / finish (incl. mobilisation)	July 2022 – March 2024 (Based on Private Treaty Sale. Jan 2023 – March 2024 (If CPO is to be implemented)

43. COVID-19 has to date had limited impact on the timescales of the programme but current predictions is that these can be mitigated by making efficiencies in the programme. The key risks associated with these current milestones are outlined in the Annex 2 in detail.

44. Below are the key areas of risk identified:
- a) COVID-19
 - b) Securing land
 - c) Timing of the ecology surveys
 - d) Combining the HIF and Science Transit scheme
 - e) Planning approval
 - f) Structural assessments and condition of Dukes Cut

Budgetary Implications

45. The current HIF2 approved programme spend is £0.8m (forward funded by OCC). To date expenditure of £0.6m has been incurred and it is forecasted that to progress to the end of feasibility, a total of £1.7m is required, £0.9m more than approved to date. This funding covers both business case development and the feasibility activity underway. This budget is covered through the capital reserve.
46. Due to tight timescales and keeping to the agreed end date of 2024, there is a need to complete feasibility and progress planning and land acquisition discussions. The additional estimated spend of £0.9m will be required at risk over and above the current approved budget. A business case has been prepared and it will be necessary for it to be signed off to release funding for the work and the programme to proceed beyond August 2020.
47. As currently set out within the draft Heads of Terms, once the contract between Homes England and OCC has been completed, all funds spent to develop schemes (and as part of HIF bid) including forward funding elements (e.g. design and land acquisition) can be reclaimed in one lump sum. Officers are still seeking to follow this approach even if the LGF pre-conditions are moved to post contract, however at present expenditure (including funding already spent by OCC of £0.6m) will not be available until the LGF approval has been given by Department of Transport. As this is currently forecast to be June 2021, this places the cost of feasibility (£1.7m - as above) and further programmed activity associated with prelim/detailed design (£3.2m – bringing total spend to £4.9m) at risk. Officers continue to discuss this point with Homes England.
48. Once the initial payment to reclaim of historic costs is made to OCC, funding will thereafter be released following completion activity against a set of milestones. Homes England will not have the 'ability to recover funding already spent' unless 'in respect of a events of Fundamental Default' as per current draft Heads of Terms.
49. Therefore, once a contract is signed, the financial risk can be managed through the GDA. Entering the GDA remains the priority as this reduces both financial and reputational risks to OCC.
50. The other financial risk for HIF2 is that the initial cost estimate, though containing an optimism bias, has not yet been developed beyond the

phase of the business case submission. Land assembly costs and the costs of significant structural maintenance or reconstruction work for the at Dukes Cut bridges if required could lead an increase in scheme costs beyond HIF2s allocated funding.

51. There is a residual financial risk if the delivery of the infrastructure programme goes beyond the funding window of March 2024 and the Council would not be able to draw down further funding. There is no OCC funding or secured s106 allocated to the infrastructure programme so no further funding is available beyond March 2024. The likelihood of this risk materialising is low based on the interim programme; this position will be qualified further following the completion of an integrated LGF/ HIF2 programme and cashflow by appointed consultants. This is anticipated in July /August 2020. Further information on the LGF funding is outlined in Annex 2

Legal Implications

52. Throughout the contract negotiations, the Legal Team has been involved and advised officers, this has informed the negotiation of the Heads of Terms to date. Homes England and the County Council will be responsible for their own legal costs although this may be recouped post-contract from the HIF funds.
53. OCC officers have met and discussed with WODC the use of a formal agreement to collaborating and supporting the delivery of housing as set out within the HIF2 bid. Heads of Terms for the agreement are in preparation and will soon be shared with WODC. Although not a contractual requirement by Homes England, this will, if secured, share the risk with the District and support monitoring and delivery of the outcomes of the funding.

Equalities Implications

54. The programme will continually be assessed to make sure that all customers are being taken into consideration in consultation design and construction. The team of specialists will be using government guidance to ensure no highway user is disadvantaged by the scheme.

Risk Management

55. A risk register has been maintained as part of the project plan. The main risk to the delivery of the schemes is delay to the programme. The funding must be spent by March 2024. Unlike in HIF 1 Didcot Garden Town,

Homes England have informed OCC that there is no possibility at this time of extending the funding period beyond March 2024. OCC is currently requesting confirmation of this in writing.

56. The likelihood of the risk materialising is low based on the interim programme; this position will be qualified further following the completion of an integrated LGF/ HIF 2 programme and cashflow by appointed consultants. This work will consider reviewing a range of activities including planning/ design, procurement, land assembly and accelerated construction. This is anticipated by August 2020.
57. Any delay to the programme will see the County Council fail to meet this deadline. This risk and the others identified on the Risk Register are being managed by officers working closely with the professional services commissioned by OCC to deliver this scheme.
58. Emerging risks will be escalated through the capital governance process to ensure that the Leadership Team are aware of issues and risks arising and impact on the Council.
59. COVID-19 currently poses an unquantifiable risk to the future delivery programme and OCC's ability to meet the March 2024 funding deadline given its potential to detrimentally impact all phases of the scheme. The COVID-19 impacts will be closely monitored and implications on programme reported.
60. A financial risk to OCC remains until a signed contract with MHCLG via Homes England is secured. This can be minimised through negotiation and refining the contract terms.
61. Any delays in securing the Science Transit funding from Department for Transport will have knock on securing and drawing down the HIF funding. This risk is being minimised by seeking to have high level management discussions with DfT and ensuring that the full business case will be approved in line with the HIF timescales for delivery. Members will be kept updated on progress.
62. Further details on the programme risks are outlined in Annex 2

Communications

63. HIF2 has a comprehensive stakeholder management strategy in place, along with a consultation and engagement strategy.
64. The HIF2 schemes have been consulted upon to varying degrees since 2015/16:
 - a) WODC Local Plan (Reg 18/19) consultation
 - b) OCC A40 Corridor Strategy – Public Consultation (2015/16)
 - c) OCC A40 Park and Ride/Bus Lanes Scheme – Public Consultation (Dec 2018/Jan 2019)

- d) OCC key stakeholder engagement has occurred since 2015/16 and through the business case and bid development.

65. Recent key stakeholder engagement has been taking place since the HIF2 funding announcement. Key community leaders in Witney, Eynsham, Hanborough and Kidlington have been engaged between December 2019 and March 2020 with and these discussions will continue framed through the consultation and engagement strategy.

Key Dates

66. Forthcoming key dates (subject to COVID-19 and a programme review) are set out at para. 42 above. In addition, the HIF 2 Funding Agreement is targeted for an August 2020 completion, subject to DfT/ HE discussions.

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Annexes (Attached at Item 13 to this agenda):

Annex 1: Grant Determination Agreement Heads of Terms

Annex 2: Additional Information

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July 2020

A40 Corridor Strategy and Improvement Projects

