



Staged Payment Agreement with Leicestershire County Council to Support Infrastructure Investment

Corporate Priority:	Priority 3: Delivering Sustainable and Inclusive Growth in Melton
Relevant Ward Member(s):	All
Date of consultation with Ward Member(s):	Ongoing and most recently 29 th October 2021
Exempt Information:	No
Key Decision:	Yes
Subject to call-in:	No General exception -

1 Summary

- 1.1 This report provides an update on the Council's work to support the County Council in delivering the Melton Mowbray Distributor Road (MMDR). The County Council have confirmed they are prepared to enter an agreement with Homes England which would secure the Housing Infrastructure Fund (HIF) grant and allow accelerated delivery of the southern section of the MMDR, subject to a number of conditions being met. One of those conditions requires a separate agreement with the Borough Council, to help mitigate the financial risks faced by the County Council, up to a cap of £1.75m plus indexation.
- 1.2 This report summarises the terms of the agreement and requests authority to enter into the agreement, subject to confirmation of the financial implications from Council, which will enable the County Council to secure the HIF grant from Homes England.

2. RECOMMENDATIONS

That Cabinet (subject to approval from Council to make the necessary provision in the Capital Programme):

- 2.1 provide authority for the Borough Council to enter into a Staged Payment Agreement with Leicestershire County Council, as summarised in this report.
- 2.2 Delegate authority to the Chief Executive, in consultation with the Leader, to make any final amendments to the agreement arising from any further negotiations with the County Council.
- 2.3 Delegate authority to the Chief Executive to enter into the agreement as soon as is practicably possible, to enable the County Council to enter into an agreement with Homes England to secure the Housing Infrastructure Fund grant.

That Cabinet recommends to Council:

- 2.4 To note and endorse the decision taken by Cabinet to enter into a Staged Payment Agreement with Leicestershire County Council (subject to Council approving the necessary provision is made in the Capital Programme).
- 2.5 To note that the agreement will fund a contribution by the Borough Council towards the costs incurred by the County Council in the provision of educational infrastructure arising from housing associated with the construction of the MMDR South.
- 2.6 To approve the financial implications arising from the agreement by making provision in the Capital Programme for a number of staged payments to the sum of £1.75m (initially funded by borrowing and subject to indexation as set out in the financial implications of the report).

3 Reason for Recommendations

- 3.1 The Council's adopted Local Plan establishes a commitment for significant housing growth within Melton. To support this growth, substantial new infrastructure is required including the need for significant investment in highways and education.
- 3.2 The Council has a long-standing commitment to deliver the Melton Mowbray Distributor Road (MMDR) and has made supporting the County Council in this effort one of its key corporate priorities.
- 3.3 Leicestershire County Council previously received commitments of c.£50m grant from the Local Majors Fund for the North and East sections of the MMDR, and in November 2020, c. £15m from the Housing Infrastructure Fund (HIF) for the Southern section.
- 3.4 Leicestershire County Council has confirmed that the total anticipated cost of education and highways costs within Melton is anticipated to be in excess of £160m over the life of the Local Plan. Even with the grant funding secured there will be a need to forward fund the costs involved and a reliance on securing the necessary developer contributions to payback the costs incurred.
- 3.5 Melton Borough Council has repeatedly acknowledged the significant investment that will be made by Leicestershire County Council. This inevitably carries with it certain risks.

The Borough Council has made a clear commitment to assist in mitigating these risks where possible. The Council has already approved a Developer Contributions Supplementary Planning Document which prioritises recovery of highways and education contributions over other infrastructure.

- 3.6 In July and September 2021 the County Council's Cabinet received an update on the MMDR and Housing Infrastructure Fund and confirmed that they were prepared to enter in to a Grant Determination Agreement (GDA) with Homes England for the HIF grant, subject to a number of conditions being met. One of those conditions required an agreement between the two councils, whereby the Borough Council would help to mitigate the financial risk to the County Council, up to a cap of £1.75m (subject to indexation).
- 3.7 The County Council have made it clear that they will not enter into the GDA with Homes England unless Melton Borough Council enters into the Staged Payment Agreement. If the County Council do not accept the HIF grant then forward funding of the southern section of the road would be in jeopardy and the southern sustainable neighbourhood more challenging to deliver.
- 3.8 The Borough Council understands that the County Council will enter the GDA with Homes England once the Staged Payment Agreement has been finalised with Melton Borough Council.
- 3.9 Following extensive negotiations on the nature and terms of this agreement, an agreed position has been reached, the specific terms of which are set out in this report.
- 3.10 This report seeks authority to enter into the staged payment agreement, subject to Council approval to make the necessary provision in the Capital Programme. This will enable the County Council to sign the GDA with Homes England.

4 Background

- 4.1 The Melton Local Plan made a commitment to deliver over 6,000 homes during the life of the plan, alongside significant infrastructure investment. To facilitate this growth Melton Borough Council has been working closely with Leicestershire County Council to deliver the Melton Mowbray Distributor Road (MMDR). Supporting the County Council to deliver the road has been retained as a key priority within the Council's Corporate Strategy 2020-2024.
- 4.2 In May 2019, the County Council were notified that they had been successful in securing c. £50m grant to support the North and East sections of the road, through the Local Majors Fund. In November 2020 they were advised they had secured c. £15m from the Housing Infrastructure Fund (HIF) to support the southern section. To receive the HIF grant, the County Council must enter a Grant Determination Agreement (GDA) with Homes England.
- 4.3 The total anticipated costs for highways and education costs within Melton over the life of the Local Plan are anticipated to be in excess of £160m. Whilst some of this would be offset from the grant funding referred to above, it would still require significant forward funding by the County Council which would then need to be recovered through developer contributions.
- 4.4 In July 2021 the County Council's Cabinet confirmed they would be in a position to accept conditionally the Housing Infrastructure Fund grant for southern section of the road subject to reaching an agreement on the terms of the GDA with Homes England, and on the basis of Melton Borough Council providing confirmation and assurances on the following:

- a) Entering an agreement with the County Council to help mitigate the financial risk, up to a cap of £1.75m
 - b) Approval of the Developer Contributions Supplementary Planning Document (SPD)
 - c) Approval of the Melton North Sustainable Neighbourhood Masterplan
 - d) Approval of the Melton South Sustainable Neighbourhood Masterplan
- 4.5 Following a period of statutory consultation, on 23rd September 2021, Council approved the Developer Contributions SPD. On 13th October 2021, Cabinet approved the Melton North Masterplan, subject to conclusion of viability testing. The Council continues to work with the County Council on the Melton South Masterplan and is on track for that to be completed by December 2021.
- 4.6 Leicestershire County Council have confirmed they are satisfied with the progress made on conditions (b), (c) and (d).
- 4.7 On condition (a), the Borough Council's lawyers have been negotiating with the County Council to reach an agreement which would assist in mitigating the financial risk faced by the County Council. Initially the parties contemplated entering into an agreement where the Borough Council would fund part of the gap between sums anticipated to be raised from developers towards the cost of educational infrastructure, and that which is actually obtained (the balancing payment). The difficulty with this approach is that it was legally complex and would impose a substantial administrative burden on the Council's finance and planning officers, as well as an unpredictable financial burden on the Borough Council during the life of the Local Plan, albeit subject to a cap.
- 4.8 On 5th October, the Borough Council was advised that the County Council were aiming to meet a 31st October deadline to enter the GDA with Homes England and that the agreement with the Borough Council would also need to be in place by this date.
- 4.9 In view of the limited time available, the legal complexities involved and to reduce the risks to the project, both councils agreed to explore an alternative approach involving a straightforward contribution by the Borough Council to the cost of educational infrastructure, by way of staged payments. This option recognises the true partnership relationship of the parties in promoting the MMDR and the growth in Melton. Whilst this option does translate a financial risk into a reality for the Borough Council, it has the advantage of significantly reducing the risk of challenges by third parties, avoids the administrative and financial burden associated with the more complex funding agreement, whilst also crystallising the Borough Council's total liability from the outset.
- 4.10 Having consulted with Homes England on timescales, it was confirmed that it would be acceptable for the Borough Council to hold a Special Cabinet and Council meeting on 2nd November to obtain authority to enter into the Staged Payment Agreement and make provision in its Capital Programme. Subject to approval, this would enable the agreement to be signed by the two councils, and then separately the GDA between the County Council and Homes England to be signed shortly afterwards.

5 Main Considerations

- 5.1 Alongside the Council's strategic commitment to secure delivery of the MMDR and support the County Council in mitigating the financial risks, the Borough Council's primary concern

in respect of any agreement reached with the County Council has been one of affordability. The agreement therefore provides the following protections:-

- 5.1.1 The Borough Council is not being asked to fund more than £1.75 million (subject to indexation); the first payment linked to commencement of construction of MMDR (South).
- 5.1.2 the funding is intended to be used for the Education Expansion programme (which is focussed on the Melton area);
- 5.1.3 In the event that the County Council formally abandons construction of the whole or any part of the MMDR (South), the Borough Council shall be discharged from further performance of its obligations under this Agreement.
- 5.1.4 The County Council will not seek any further payment or contribution from the Borough Council towards the costs of providing educational or any other kind of infrastructure to mitigate any costs associated with the construction of the MMDR (North and East).

5.2 The agreement will bind this Council to:

- 5.2.1 Pay the sum of £1.75m (one million seven hundred and fifty thousand pounds Sterling), subject to indexation, in instalments in the amounts set out in the schedule to the Agreement and below:

	Milestone	Payment
1	At the Commencement of Construction of the MMDR (South)	£250,000 (subject to indexation)
2	<p>Within 3 years from the earlier of either of the two following dates:-</p> <ul style="list-style-type: none"> i. the commencement of the construction of an extension to any existing school or the construction of a new school only associated with the Education Expansion Programme contemplated by and as defined by this Agreement; or ii. commencement of construction of the MMDR (South). 	£500,000 (subject to indexation)
3	5 years from the Commencement of the Construction of the MMDR (South)	£500,000 (subject to indexation)
4	7 years from the Commencement of the Construction of the MMDR (South)	£500,000 (subject to indexation)

- 5.3 The key point for members to note is that the payments will be staged in 4 tranches to reduce the strain on the Borough's finances in the early years with those payments being tied to the County Council's delivery of the MMDR. Each Instalment will be subject to indexation and increased or decreased in line with the Indexation Index. The base date for the indexation shall be the date of this Agreement.
- 5.4 No part of any payment made by this Council to the County Council under the agreement will be applied to the provision of any infrastructure or for any purpose other than towards the Education Expansion Programme as defined in the Agreement.
- 5.5 The County is not promising to complete the MMDR (North and East) and a failure on the part of the County to start, progress or complete the MMDR (North and East) or any modified version of the MMDR (North and East) does not provide a contractual basis for this Council to withhold the payment of the instalments referred to in the Agreement appended to this report
- 5.6 The agreement commits the County Council (inter alia) to the following:
- 5.6.1 Enter into a Grant Determination Agreement for the draw-down of HIF with Homes England (HE) to secure the funding for the construction of the MMDR (South). The terms of the agreement will not come into effect until LCC have entered the GDA.
- 5.6.2 To apply the whole of the grant received from HE in accordance with the terms of the GDA
- 5.6.3 To apply for planning permission, take all other necessary preparatory steps and to commence and complete the construction of the MMDR (South)
- 5.6.4 Not to seek any further payment or contribution from the Borough Council towards the costs of providing educational or any other kind of infrastructure to mitigate any costs associated with the construction of the MMDR (South) whether during the period of the adopted Melton Local Plan or thereafter.
- 5.6.5 Not to seek any further payment or contribution from the Borough Council towards the costs of providing educational or any other kind of infrastructure to mitigate any costs associated with the construction of the MMDR (North and East) whether during the period of the adopted Melton Local Plan or thereafter.
- 5.7 Members should note that whilst the County expects to procure the completion of the MMDR (South) as it was originally planned, given the scale and complexity of the undertaking, the MMDR (South) may not ultimately be implemented precisely as it was planned or envisaged.
- 5.8 Any disputes between the Parties will be referred to the Monitoring Officer for each Authority.
- 5.9 Failure to enter into this agreement will result in the County Council not signing up to the GDA which would prejudice the delivery of the southern section of the MMDR and Local Plan.
- 5.10 Given the long-standing delivery risk faced by the MMDR (south), the challenge of securing the Housing Infrastructure Fund grant, the conditions applied by the County Council, and the recent time pressure applied to reach an agreement, the significant work undertaken to bring this proposition before Cabinet should not be under-estimated. The conclusion of this agreement, alongside the Developer Contributions SPD and continuing progress on the masterplans represents significant progress towards delivering a key

corporate priority and reaffirms this Council's commitment to securing the MMDR and delivering the homes, jobs and infrastructure Melton requires.

6 Options Considered

- 6.1 **Not to enter an agreement:** One of the four conditions the County Council established for entering the GDA with Homes England for the HIF grant was an agreement with the Borough Council to help mitigate the financial risk they faced. If the Borough Council chose to not enter an agreement, the County Council have made clear that they would not enter the GDA with Homes England. This would mean the HIF grant would not be secured and the early delivery of the southern section of the road would be jeopardised. It would also add further pressure to any viability concerns for the southern sustainable neighbourhood. This would create a risk to the adopted Local Plan which could necessitate an early review.
- 6.2 **To conclude negotiations for the original s106 shortfall and balancing payment agreement:** Negotiations on the agreement have been ongoing for a number of months and this option is not proposed for the reasons set out in paragraph 4.7 above.

7 Consultation

- 7.1 Extensive consultation was undertaken as part of the development of the Local Plan, and further consultation has been undertaken as part of the establishment of the Developer Contributions SPD. Efforts to support delivery of the MMDR have been reported to Cabinet repeatedly over the last year, and specifically relating to reaching agreement on the HIF grant and southern section.
- 7.2 All members have been briefed informally throughout the discussions with the County Council.

8 Next Steps – Implementation and Communication

- 8.1 Subject to Council approving the funding requirements being added to the Council's Capital Programme, the Staged Payment agreement will be signed.

9 Financial Implications

- 9.1 As capital expenditure the council could fund any contribution from either borrowing, capital receipts or revenue reserves. The implications of each form of funding is set out below:
- a) Revenue Reserves – the level of revenue reserves held by the council is low as has been highlighted in the recent LGA financial sustainability review and by the CIPFA financial resilience indicator. The current advice is that the council should be looking to increase these reserves to improve its financial resilience. Revenue reserves are the most flexible form of resources the council has as they can be used for both revenue and capital expenditure. These provide an essential cushion should there be a gap in the revenue budget that cannot immediately be bridged and also provide any resources to fund one off costs of change either invest to save or the cost associated with reducing services.

- b) Capital Receipts – the level of capital receipts held by the council is low with negligible unallocated general receipts and just over £700k set aside for the leisure vision. Capital receipts are limited in their use and can only be utilised to either repay debt or to fund capital expenditure. There is the potential for more receipts in the future as a result of the council’s asset development programme which is looking at disposal of key sites in the borough. Alternative uses for these receipts have been discussed previously such as investing in various revenue generating activities. There is also the unknown costs associated with the maintenance of the councils other assets for which stock conditions surveys are awaited and where the council holds minimal sinking funds for repair and maintenance. As such should any receipts be applied to fund a contribution to the County Council they would then not be available to fund such alternative uses and a case for borrowing to meet these other capital costs would need to be made and funded.
- c) Borrowing – The council could borrow the money. There are 2 options associated with borrowing either an actual loan most likely from the Public Works Loans Board or borrowing internally against other reserves/cashflow. In both cases the council would need to set aside from the revenue budget a minimum amount each year based on the life of the asset which would cover the principal sum borrowed. The maximum period this could be repaid over based on the asset life is 50 years representing a 2% cost per annum of the amount borrowed. In addition, the interest on any loan would need to be met from the revenue budget based on the rate of interest the loan is taken out at. If borrowing is undertaken internally the interest lost from not investing these funds would be the cost to the revenue budget. It should be noted that when any capital is funded from borrowing there is generally an element of internal borrowing for a period of time as the loan would be taken at the best time taking into account the balance of current borrowing interest rates, risk of future increases and the current rate of return on investments

9.2 The proposed form of funding is borrowing and based on current interest rates and forecasts up to March 2024 (the latest available) and assumed payment schedule to the County Council set out in para 5.2 the cost of funding a total contribution of £1.75m is set out below. It should be noted that the contribution is subject to indexation with the agreement providing for a lower of the Retail Prices Index or Consumer Price Index applicable from the date the agreement is signed. These cost assumptions do not take into account the impact of indexation. Later payment increases the overall contribution as indexation will increase the contributions and therefore the overall level of debt to be serviced. However, this reduces the contributions in the earlier years whilst the Council is under financial pressure due to its forecast budget gap.

	Principal	Loan Interest	Interest Rec'd on Principal set aside	Interest foregone	Net Cost to 2079/80
	£000	£000	£000	£000	£000
50 year fixed rate maturity loan	1,750	2,099	-476	0	3,373
Internal borrowing/use of capital receipts	1,750	0	0	399	2,149

- 9.3 A mix of use of capital receipts and borrowing could be utilised and also should the Council fund the contribution from borrowing initially and then decide it wished to repay this debt at a later stage from capital receipts it could do so, however there could be a premium associated with early repayment of any external debt which would need to be assessed at the time to ensure it represented value for money.
- 9.4 The MTFs and early work on the budget preparation for 2022/23 indicates significant pressure on the general fund budget with a forecast budget gap of circa £800k before the impact of this agreement is factored in. This is against a background of low revenue reserves and minimal unallocated capital receipts. The cost of funding this contribution will add to the financial pressure this funding gap presents. If this gap is not able to be addressed through the finance settlement and improvements in forecast income streams affected by covid then significant savings and service reductions will need to be made to balance the revenue budget.
- 9.5 The council has been successful in obtaining Capacity funding from Homes England which is subject to the County Council entering the GDA. This totals £86k and will serve to relieve the pressure to some extent on the future costs of local plans work as it will reduce the draw on the local plans reserve for the funding of the necessary masterplanning work that has been undertaken.

Financial Implications reviewed by: Director for Corporate Services

10 Legal and Governance Implications

- 10.1 The Parties agree that they have the power to enter into this agreement under s.1 of the Localism Act 2011, s.111 Local Government Act 1972 and s.1 Local Government (Contract) Act 1997.
- 10.2 The principal driver of this agreement is the importance of securing the delivery of the local plan strategy which would be fundamentally prejudiced by the failure to deliver the MMDR and would necessitate an immediate review and potential replacement of the Local Plan.

Legal Implications reviewed by: Monitoring Officer

11 Equality and Safeguarding Implications

- 11.1 There are no direct equality and safeguarding implications arising from this report.

12 Community Safety Implications

- 12.1 There are no direct community safety implications arising from this report.

13 Environmental and Climate Change Implications

- 13.1 The MMDR will support work to reduce pollution and improve air quality within the town.

14 Risk & Mitigation

Risk No	Risk Description	Likelihood	Impact	Risk
1	The County Council fail to enter the GDA with Homes England to secure the HIF	Low	Catastrophic	Medium Risk
2	The County Council fail to build the MMDR South which would necessitate a review and potential replacement of the Council's Local Plan	Significant	Catastrophic	High Risk
3	The County Council fail to build the MMDR North and East which would necessitate a review and potential replacement of the Council's Local Plan	Significant	Catastrophic	High Risk
4	The financial costs associated with entering the agreement have an impact on the Council's ability to meet other priorities or require the Council to make reductions in services	High	Critical	High Risk

		Impact / Consequences			
		Negligible	Marginal	Critical	Catastrophic
Likelihood	Score/ definition	1	2	3	4
	6 Very High				
	5 High			4	
	4 Significant				2, 3
	3 Low			1	
	2 Very Low				
	1 Almost impossible				

Risk No	Mitigation
1	The Staged Payment Agreement commits the County Council to enter the GDA once the Staged Payment Agreement has been signed. Assurances have been received on the completion of the two Masterplans. The Staged Payment Agreement will not take effect until the GDA is signed.
2	This report seeks authority to enter the Staged Payment Agreement with the County Council which should then enable them to enter the GDA. Whilst the specific terms of the GDA remain confidential, the Council understands that in accepting the funding, the County Council will be making a commitment to build the MMDR south. Should the County formally abandon the MMDR South, the terms of the Staged Payment Agreement protect the Borough Council from future liabilities. This would not though mitigate the need to review and potentially refresh the Local Plan should the road not be built.
3	The Staged Payment Agreement only relates the MMDR South. Delivery of Melton North and East will be not be a condition of the agreement, although the Borough Council continues to work closely with the County Council on the Masterplan North, and is a member of the Project Board overseeing implementation of the project.
4	Whilst the Council should have the ability to manage the financial burden created through this agreement the impact on the Council's finances should not be underestimated. The Council already has a significant deficits within its MTFs and local government finances remain uncertain. Investing resources in delivery of the road is likely to have an impact on the Council's ability to resource other priorities and is likely to require cuts or savings to be found elsewhere. Delivery of the MMDR is one of the Council's key corporate priorities and through the Financial Sustainability Programme the Council has a mechanism through which savings can be found and resources prioritised. The Council has demonstrated an ability to address previous funding gaps and has managed to avoid drawing on un-ringfenced reserves over the last two years. Similar discipline and commitment to make the necessary decisions to ensure future budgets are balanced will be required.

15 Background Papers

Leicestershire County Council Cabinet – 21st July 2021 – Item 31: [Melton Mowbray Distributor Road Southern Section - Housing Infrastructure Fund Grant](#). And [MMDR South HIF Supplementary Report](#)

Leicestershire County Council Cabinet – 17th September 2021 – item 5: [Melton Mowbray Distributor Road Southern Section - Housing Infrastructure Fund Grant](#).

Melton Borough Council Cabinet – 13th October 2021 – item 7: [Melton North Sustainable Neighbourhood Masterplan](#)

Melton Borough Council Cabinet – 21st September 2021 – item 3: [Developer Contributions Supplementary Planning Document \(SPD\)](#)

Melton Borough Council Cabinet – 21st July 2021 – [Minutes](#)

16 Appendices

16.1 None

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