

# Somerset West and Taunton Council

## Special Full Council – 1 December 2020

### Staplegrave New Community - Housing Infrastructure Fund

This matter is the responsibility of Executive Councillor Mike Rigby

Report Author: Kate Murdoch, Strategy Specialist

#### 1 Executive Summary / Purpose of the Report

- 1.1 In March 2019 the Government confirmed £14.2m of Housing Infrastructure Funding (HIF) to deliver the Staplegrave/North Taunton spine road and associated infrastructure early in the development, subject to specific conditions. The Government has confirmed that the HIF funding will operate as recoverable grant to Somerset West and Taunton. SWT will be responsible for loaning the HIF funding to the developers, recovering the funding and recycling it to unlock further housing on other development sites in Taunton.
- 1.2 In order to access this funding Somerset West and Taunton entered into a Grant Funding Agreement (GFA) with Homes England in December 2019 and have been negotiating the Heads of Terms for the loan agreement with the Staplegrave developers.
- 1.3 In January 2020 a late s106 education request for £9.6m, submitted by Somerset County Council, on the Staplegrave East development (ref: 34/16/0014), prevented the outline permission from being issued and HIF loan agreement from being progressed.
- 1.4 Working in partnership with Homes England, Somerset County Council and the developers, officers have negotiated the potential re-profiling of an element of the HIF funding, to ensure the early delivery of the primary school at Staplegrave East. Correspondence from Homes England confirming this new position is attached in Appendix A. On this basis Somerset County Council agreed to withdraw the s106 education request on Staplegrave East.
- 1.5 The delivery of the new spine road and primary school at the Staplegrave development, will be subject to an open book procurement process, to determine accurate construction costs.
- 1.6 A loan arrangement between Somerset West and Taunton Council and the Staplegrave developers will need to be agreed before HIF funding can be drawn down from Homes England. These are subject to ongoing negotiations and officers need to ensure they align with the requirements of the Homes England Grant Funding Agreement.
- 1.7 The Housing Infrastructure Fund needs to be fully drawn down and spent by March 2023 on the approved infrastructure. The Council risks losing this Government funding if this deadline is not met.

## **2 Recommendations**

- 2.1 Approve delegated authority to the Director of Development and Place and s151 Finance Officer, in consultation with the Planning Portfolio Holder, to agree and enter into a suitable loan facility between Somerset West and Taunton and the Staplegrove developers (or alternatively the landowners with appropriate covenants to bind developers when they are appointed), to ensure draw down of the HIF funding in line with the requirements of the Homes England Grant Funding Agreement.
- 2.2 Approve a Supplementary Budget of £14.2m is added to the General Fund Capital Programme for the provision of the loan funding to the developer, dependent on the agreement of terms

## **3 Risk Assessment (if appropriate)**

- 3.1 The £14.2m Staplegrove Housing Infrastructure Funding has to be fully drawn down and spent on the agreed infrastructure provision by 31st March 2023, otherwise parties risk losing the Government funding for infrastructure delivery at the Staplegrove development. If the Housing Infrastructure Funding (HIF) is not drawn down the outline permission and associated s106 has agreed trigger points for the delivery of the spine road and primary school site. The HIF ensures earlier delivery of the spine road and primary school. Officers are working closely with the developers and Somerset County Council to ensure the March 2023 deadline is met. The recommendations in this report delegating authority to the Planning Portfolio Holder and Director of Development and Place should assist with minimising the risk of delay arising from the Council decision making processes.
- 3.2 The £14.2m HIF funding is not sufficient to cover the anticipated costs of the spine road and the delivery of the primary school. The costs of delivering the spine road and primary school will be subject to open book procurement process with the developers, Somerset County Council and Somerset West and Taunton, to approve the contractor's specifications for delivering the spine road and primary school. Current negotiations are seeking to minimise this risk with the developers' cash flowing the balance of the funding required for the completion of the primary school. This is subject to ongoing negotiations.
- 3.3 In the current economic climate and given the associated uncertainty for the UK housing market, there is a risk the developers chose not to draw down the funding to unlock this new community. This in turn will impact on the Council's ability to demonstrate a five year housing land supply and meet the Government's Housing Delivery Test, placing the area at greater risk of unplanned and speculative development (Corporate Risk Register 16). Officers are working closely with Homes England and the developers to minimise this risk.
- 3.4 Following advice from Natural England regarding the unacceptable levels of phosphates in the Somerset Levels and Moors Ramsar site, all affected residential applications awaiting determination are on hold. Natural England have advised that before determining planning applications, which may give rise to additional phosphates within the Somerset Levels and Moors catchment area, a Habitat Regulations Assessment be undertaken to establish the likelihood of any adverse impact, with appropriate mitigation measures where necessary, to ensure a 'nutrient neutrality' approach. This advice applies to the Staplegrove development and presents a risk to the HIF spend programme, officers are working closely with Homes England to seek an extension to the funding spend programme to minimise this risk.

## **4 Background and Full details of the Report**

- 4.1 In March 2019 the Government confirmed £14.2m of Housing Infrastructure Funding (HIF) to deliver the Staplegrove/North Taunton spine road early in the development subject to specific conditions.
- 4.2 The Staplegrove/North Taunton new community is allocated in the Taunton Deane Site Allocations and Development Management Plan (2016). Two outline planning applications were submitted to cover the site referred to as Staplegrove East (ref 34/16/0014) and Staplegrove West (ref 34/16/0007).
- 4.3 Staplegrove West now benefits from outline permission (with all matters reserved except access) for a residential-led, mixed use development to include up to 713 new dwellings, 1 ha of employment land, green infrastructure, landscaping, play areas, sustainable drainage systems and associated works. The site is to be developed by Redrow Homes.
- 4.4 Staplegrove East has outline approval (subject to s106) for a residential-led mixed use development for up to 915 new dwellings, a primary school, 1 ha of employment land, local centre, open space including allotments and sports pitches, green infrastructure, landscaping and woodland planting, sustainable urban drainage systems. The s106 negotiations for this site remain outstanding.
- 4.5 The Staplegrove development will be served by an internal spine road to connect the A358 Staplegrove Road with Kingston Road. Both planning applications included the points of access from Staplegrove Road and Taunton Road as detailed matters, with all other matters reserved, including the detailed design of the spine road. Trigger points for the delivery of the spine road have been agreed with the Highway Authority as part of the outline planning application and require the completion of the road prior to the occupation of 250 dwellings for Staplegrove east and 325 dwellings for Staplegrove west or five years from first occupation, whichever comes first.
- 4.6 For both sites the developers submitted viability evidence. The agreed outcome from the viability negotiations was a reduction in affordable housing provision to 15% rather than the 25% development plan policy affordable housing requirements.
- 4.7 A resolution to grant was secured for both sites in October 2017. This was agreed on the basis of a 15% affordable housing contribution, in the absence of any HIF Marginal Viability grant, with a clause to provide a higher proportion of affordable housing, up to 25%, if HIF Marginal Viability grant was provided.
- 4.8 The HIF grant application was submitted in September 2017 on the understanding that this would deliver grant funding to assist viability on the Staplegrove site, thereby delivering a more policy compliant affordable housing scheme. The funding would also ensure early delivery of the spine road and early access to the primary school site. However following submission of the HIF bid, the Government confirmed that the HIF funding will operate as recoverable grant to Somerset West and Taunton. SWT will be responsible for loaning the HIF funding to the developers, via quarterly claims to Homes England over the construction period for the spine road and the primary school up to March 2023. SWT is then responsible for recovering the HIF Loan at a later date from the development.
- 4.9 As the HIF funding is now a loan to the developers, it does not alter the currently agreed viability position. Evidence has been submitted by the developers to confirm this position and this has been independently verified, on behalf of the Council, by Three Dragons.

However once the HIF loan is drawn down by the Staplegrove developers and recovered back to the Council, Somerset West and Taunton is able to utilise the recovered HIF funding to unlock further housing, on other development sites in Taunton.

- 4.10 In January 2020 a late s106 education request was submitted by Somerset County Council for £9.6m relating to the Staplegrove East development (ref: 34/16/0014). This prevented the completion of s106 negotiations and the issuing of the outline permission for Staplegrove East, both of which are prerequisites for drawing down the Housing Infrastructure Fund grant.
- 4.11 Working in partnership with Homes England, Somerset County Council and the developers, officers have negotiated the potential re-profiling of an element of the HIF funding to ensure the early delivery of the primary school at Staplegrove East. Correspondence from Homes England confirming this new position is attached in APPENDIX A. On this basis Somerset County Council agreed to withdraw the s106 education request on Staplegrove East, thereby enabling the s106 agreement to progress.
- 4.12 Officers are working with Somerset County Council to agree an Education Funding Strategy for Taunton. This seeks to ensure a long term funding plan is agreed between Somerset County Council and Somerset West and Taunton. This should reduce the risk of (1) SCC's future education funding requirements negatively impacting on development viability; and (2) delay to the determination of key housing developments in Taunton due to education infrastructure delivery negotiations, which currently take place on a site by site basis. The draft Education Funding Strategy will be reported to members and will need to be approved by SWT Council.
- 4.13 Officers are now able to progress negotiations on the HIF Loan Agreement between the Council and the developers. Shape Legal are advising officers to ensure the HIF Loan Agreement, between the Council and the developers, complies with the Homes England Grant Funding Agreement.
- 4.14 The Housing Infrastructure Funding needs to be fully drawn down and spent on the agreed infrastructure provision by 31st March 2023.

## **5 Links to Corporate Strategy**

- 5.1 Homes and Communities is a priority strategic theme in the Council's Corporate Strategy. The HIF funding and recommendations outlined in this paper align with the Objective 7: 'seek additional funding for new strategic infrastructure and regeneration projects from developers, investors, Government and other funders, which support or enable existing or new communities without our district'.

## **6 Finance / Resource Implications**

- 6.1 In December 2018 Homes England confirmed that the HIF MV funding would no longer be grant funding but instead would be provided as a loan to the developers through a recoverable grant to SWT. The Council is responsible for agreeing and administering the loan to the developers via the submission of quarterly claims to Homes England up to March 2023. SWT is also responsible for recovering the £14.2m to reinvest in unlocking further housing development sites in Taunton.
- 6.2 The Homes England Grant Funding Agreement requires State Aid advice on the loan terms. This will be sought when terms of the loan agreement have been agreed. The

initial State Aid advice concluded that if SWT satisfies itself that it is entering into a commercially prudent transaction on terms similar to, and available on the open market, it will not be contravening the State Aid rules.

- 6.3 The key point is that this is effectively a recoverable grant to SWT which bears a 0% financing cost to SWT.
- 6.4 Therefore it could be argued that the commercial return SWT should be considering is the difference between the cost and the yield of a loan made on commercial terms to any other entity.
- 6.5 In the draft Heads of Terms with the Staplegrove developers the interest rate is 0% for the first 6 months following the complete draw down of £14.2m of HIF funding, after which interest accrues at 4% per annum (this is subject to ongoing negotiation given an element of the HIF funding is now being utilised to deliver the primary school).
- 6.6 Based on the above, it is submitted that the terms in the emerging loan agreement will not breach the state aid rules as it provides for a commercial return to SWT.
- 6.7 The provision of a loan to a third party for the creation of such assets represents capital expenditure. As such the Council is recommended to approve an additional budget of £14.2m in the capital programme for the loan advance, to be funded by grant income from HE. The budget will be profiled over 2021/22 and 2022/23 financial years, reflecting the anticipated pace of drawdown of loan tranches by the developer.
- 6.8 Where the loan is repaid in cash to the Council this will represent capital receipts which can then be used to finance the reinvestment of 'recycled funds'. Related budget approvals will be needed in due course to include the reinvestment in the future capital programme when the loan is repaid.

## **7 Legal Implications (if any)**

- 7.1 Any Loan Agreement between the Council and the developers must comply with the conditions of funding as set out in the Homes England Grant Funding Agreement. A copy of the Funding Agreement has been provided to the landowners' solicitors and legal advice is being obtained from Shape Legal.
- 7.2 Any monies loaned to landowners or developers under this scheme must comply with State Aid Regulations and this is a funding condition under the Homes England Grant Funding Agreement. The Funding Agreement also requires that independent state aid advice is provided as part of the grant pre-draw conditions and this will be commissioned through Shape Legal prior to any funds being claimed from Homes England.
- 7.3 The promoters of both Staplegrove West and Staplegrove East are requiring that any loan agreement is entered into between the Council and the current landowners, of which there are several. The intention is that once developers have been brought on board for both sites, those developers will enter into covenants to take on the obligations and responsibilities of such loan agreement (although Redrow are already in place with regard to Staplegrove West). This will require further agreements to be entered into at the time when the second developer is appointed. Such a position is preferred, however, to the option of trying to manage and co-ordinate any loan with various different landowners.

**8 Climate and Sustainability Implications (if any)**

8.1 No direct carbon/environmental impacts arising from the recommendations.

**9 Safeguarding and/or Community Safety Implications (if any)**

9.1 There are no safeguarding and community safety implications.

**10 Equality and Diversity Implications (if any)**

10.1 There are no equality or diversity implications.

**11 Social Value Implications (if any)**

11.1 The HIF funding was sought to enable the Staplegrove spine road to be completed early in the development. The £14.2m HIF 'recoverable' grant is provided to the Staplegrove developers as a loan. Somerset West and Taunton is responsible for entering in to the loan arrangements with the developers and recovering the HIF funding. This recovered funding is then available to Somerset West and Taunton to invest in infrastructure to 'unlock' other key housing sites in Taunton.

11.2 Unlocking housing and supporting infrastructure delivery (both the new spine road and the new primary school) at the Staplegrove new community will provide economic and social benefits for the local area. The environmental implications of the proposed works have been considered as part of the determination of the outline planning application.

**12 Partnership Implications (if any)**

12.1 Officers have been working closely with Homes England and Somerset County Council education and highways colleagues in progressing the HIF Grant Funding Agreement.

12.2 The £14.2m Staplegrove Housing Infrastructure Funding has to be fully drawn down and spent on the agreed infrastructure provision by 31st March 2023, otherwise parties risk losing the Government funding for this development. There is a possibility that Homes England and MHCLG may be willing to consider an extension if, for any reason, the funding could not be drawn down in that time, but there is no guarantee.

**13 Health and Wellbeing Implications (if any)**

13.1 No health and wellbeing implications arising from the recommendations.

**14 Asset Management Implications (if any)**

14.1 No asset management implications arising from the recommendation the spine road and the new primary school will be the responsibility of Somerset County Council as the Highway and Education authority.

**15 Data Protection Implications (if any)**

15.1 No data protection implications arising from the recommendations.

**16 Consultation Implications** (if any)

16.1 No consultation implications arising from the recommendations.

**17 Scrutiny Comments / Recommendation(s)** (if any)

*N/a*

**Democratic Path:**

- **Scrutiny / Corporate Governance or Audit Committees – No**
- **Cabinet/Executive – Yes**
- **Full Council – Yes**

**List of Appendices (delete if not applicable)**

Appendix A	Homes England letter confirming reallocation of HIF funds for provision of a new primary school at Staplegrove new community
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**Contact Officers**

Name	Kate Murdoch
Direct Dial	01823 219558
Email	k.murdoch@somersetwestandtaunton.gov.uk