

REPORT TO: CABINET

DATE: 4 NOVEMBER 2021

TITLE: ROLLING INFRASTRUCTURE FUND
MEMORANDUM OF UNDERSTANDING

PORTFOLIO HOLDER: COUNCILLOR MICHAEL HARDWARE,
PORTFOLIO HOLDER FOR STRATEGIC
GROWTH

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This is a Key Decision
It is on the Forward Plan as Decision Number I012709
Call-in Procedures may apply
This decision will affect no ward specifically.

RECOMMENDED that Cabinet agrees:

- A** The Memorandum of Understanding relating to The Harlow & Gilston Garden Town Rolling Infrastructure Fund (attached as Appendix A to the report) and agrees its submission to Homes England by the end of November 2021 as required of the Harlow and Gilston Garden Town Authority partners and specifically Hertfordshire County Council (as accountable body for the Housing Investment Grant funding to which the Memorandum of Understanding relates).
- B** To set up and operate the Rolling Infrastructure Fund 'in principle' subject to more detailed work and approval of the appropriate governance and operational arrangements for its management.
- C** To govern the Rolling Infrastructure Fund initially in accordance with the approved Memorandum of Understanding as required by Homes England as a condition of the Housing Investment Grant funding and subsequently in accordance with any further governance arrangements that may be effected.

REASON FOR DECISION

- A** To ensure that the Harlow and Gilston Garden Town Authority partners and specifically Hertfordshire County Council (as accountable body for the Housing Investment Grant funding) meets requirements within the Grant Determination Agreement with Homes England for the award of the Housing Investment Grant,

specifically that of the recycling of the Housing Investment Grant into a Rolling Infrastructure Fund.

- B** To establish a mechanism through which the Harlow and Gilston Garden Town Authority partners will initially agree how to operate the Rolling Infrastructure Fund pending future governance arrangements.

BACKGROUND

1. Harlow Council, working with East Herts and Epping Forest District Councils and Essex and Hertfordshire County Councils (the HGGT Authority partners) has committed to the principle of growth in and around Harlow through the Harlow and Gilston Garden Town (HGGT) in consideration of the Garden City Principles.
2. The HGGT Authority partners have set out a Vision for this growth (the 'Vision'):
 - a) "The pioneering New Town of Gibberd and Kao will grow into a Garden Town of enterprise, health and sculpture at the heart of the UK Innovation Corridor. Harlow and Gilston will be a joyful place to live with sociable streets and green spaces; high quality homes connected to fibre optic broadband; local centres accessible by walking and cycling; and innovative, affordable public transport. It will set the agenda for sustainable living. It will be adaptable, healthy, sustainable and innovative."
3. The Memorandum of Understanding (MoU) relating to the Harlow and Gilston Garden Town Rolling Infrastructure Fund (RIF) (the 'RIF MoU') has been prepared on behalf of the HGGT Authority partners in order to articulate the collective agreement and set out the mechanism through which the HGGT Authority partners will initially agree how to operate the RIF pending future governance arrangements and in order to satisfy Homes England that an appropriate way of recycling the Housing Investment Grant (HIG) funding exists.
4. The HGGT partnership submitted a bid in 2019, led by Hertfordshire County Council (HCC), for government funding under the Housing Investment Fund to "forward-fund" the works to the Stort Valley Crossings and the to deliver the North to Centre, Harlow Town Station to Town Centre, Sustainable Transport Corridor (STC). The Stort Valley Crossings and STC are essential infrastructure which is necessary to unlock the planned housing and economic growth in accordance with allocations in the Local Plans of the relevant partner councils, and planning applications for which are currently being promoted at the Garden Town strategic site known as the Gilston Area. The Stort Valley Crossings and the STC will be crucial to the achievement of the modal shift objectives set out in the HGGT Vision and Transport Strategy for active and sustainable modes of transport like, walking, cycling and public transport.
5. As a key part of the HIG bid, it was proposed that the initial government money for the infrastructure would forward fund the works ahead of when they would have been built under the traditional developer obligations/contributions route

secured through Section 106 Agreements. Under the latter method the developer would be under contractual obligation to provide the infrastructure by the time an agreed number of housing units are completed. By securing the HIG funding, the time difference for delivery between these two approaches has been estimated at two to three years. By the HIG funded route the aim is to ensure that the Crossings and STC are in place in time to influence new resident travel choices. The HIG funding has to be spent within a specified availability period, before April 2025 and in light of this the agreed list of projects to be funded by the HIG has been widened to include projects that could be completed by April 2025 to maximise the use of the HIG funding.

6. In March 2020 HM Government awarded £171.18 million in HIG to HCC. The RIF was enshrined in the terms and conditions related to the award, which also required a Recovery & Recycling Strategy (RRS) as a condition of the HIG funding. The RRS demonstrates to Homes England how the HIG funding will be recovered from developers such as those promoting the housing schemes for the Gilston Area and the Stort Valley Crossings infrastructure, in the form of developer contributions under Section 106 Agreements, how these contributions will be brought into the RIF, and how the RIF will be recycled into other qualifying projects. The RRS establishes the concept that the recycling will be achieved by the effective operation of RIF. The Recovery element of the RRS is based on a payment schedule of section 106 contributions which will be concluded between the Local Planning Authority (LPA) and developers as part of the Section 106 Agreement related to the Gilston Area outline housing applications and similarly for other strategic sites in the Garden Town. The RRS when completed and agreed will be submitted by HCC (as the accountable body for the HIG) to Homes England to satisfy the HIG funding conditions. HM Government indicated through Homes England that if a satisfactory RRS was implemented, the HIG money would not need to be repaid back to Homes England as long as it was continually recycled for appropriate HGGT infrastructure subject to relevant considerations.
7. Beyond the Gilston Area housing applications, the RIF will continue to receive the future Section 106 contributions from the other strategic sites such as East of Harlow, Latton Priory and Water Lane. The contributions will be collected by the relevant LPA in the first instance and would subsequently flow through all five partners. It is critical that all HGGT partners maximise the collection of these contributions and are supported by consistent policy and evidence across HGGT via the HGGT Infrastructure Delivery Plan and Section 106 Contributions Policy or other policy mechanisms.
8. Homes England will require evidence that there is a clear consensus between the HGGT Authority partners as to how the RIF will be set up, managed and governed. Homes England have been supplied with an advanced draft of the RIF MoU and their comments have been considered in the final version.
9. Decisions about funding the delivery of vital infrastructure for the Garden Town from the RIF are strategic matters which would influence the potential to deliver the growth planned for the Garden Town. Therefore, individual and incremental decisions by any one or more of the partner authorities without effective strategic

oversight and management of the RIF could present risks to delivering the HGGT Vision, planned growth, infrastructure and modal shift objectives. This is why the RIF needs a clear collective decision making governance structure, endorsed by the HGGT Authority partners, to ensure strategic, transparent and equitable allocation of RIF funds towards suitable projects. An early estimate of the value of contributions that form the RIF is approximately up to £270 million.

10. The RIF is therefore a powerful tool and potential source of infrastructure funding to help the HGGT Authority partners to fulfil the HGGT Vision and bring about transformational change to the whole Harlow area. If the infrastructure spend is controlled and if sufficient developer contributions and tariffs can be collected as envisaged by the Infrastructure Delivery Plan and relevant policy to secure future streams of funding, the RIF could “roll” a number of times. The future sources of infrastructure funding into the RIF will be dictated by the relevant policy context and would benefit from clear evidence base and policy requirements for identified infrastructure. Initially, the HIG funding of £171.18 million will be used to build the agreed infrastructure; the developers will then pay further contributions, agreed as part of the Section 106 conditions linked to their planning consent, into the RIF. These funds can then be used to fund other infrastructure in accordance with purposes of the relevant Section 106 agreements.
11. There is a high likelihood that there will be insufficient funds in the RIF at the point when it is needed to forward fund the next section of the STC. Innovative finance options will need to be considered as soon as possible including the potential to borrow in advance of the developer contributions reaching the RIF. It is essential that RIF governance progresses at pace to provide those options to partners.
12. The HIG award necessitated a governance and consensus seeking process for the establishment of the RIF and a Memorandum of Understanding was agreed as the appropriate mechanism. Weightmans, the HGGT legal advisors, produced the first draft in October 2020 and this was circulated to partners for comment and amendment. A Comments Log was established to ensure that all the detailed comments were addressed. Further versions have been produced and the current one is version 4. Version 3 was circulated in August 2021 and has had input from legal and finance colleagues across the partnership. The level of engagement has been high and many of the comments concern the detailed arrangements that will be the next phase of the RIF set up. The comments have been included, where appropriate, in the final version.
13. The RIF MoU was approved by the HGGT Authority Partners on 22 October 2021, for submission to the East Herts District Council Executive; the Epping Forest District Council Cabinet; the Harlow District Council Cabinet and the relevant portfolio holders of Essex and Hertfordshire County Councils to be endorsed before submission to Homes England.

ISSUES/PROPOSALS

14. The purpose of this report is to enable consideration of the final version of the RIF MoU and to formally confirm its approval. The finalised document is attached as Appendix A.
15. With the amendments set out above following the engagement between the HGGT Authority partners it is now considered that a robust final document has been produced and one which can be approved.
16. Once approved by all of the HGGT Authority partners, the RIF MoU will be submitted to Homes England by the end of November 2021 to articulate the collective agreement and set out the mechanism through which the HGGT Authority partners will initially agree how to operate the RIF.
17. Following agreement to approve Harlow Council would expect to continue to engage with the wider HGGT Authority partners around detailed work to set up and govern the RIF.
18. The Memorandum of Understanding sets out the terms under which the RIF will be set up. It does not go into detail but sets out the guiding principles. These are:
 - a) Unanimous approval of all partners is required to set up the RIF;
 - b) The RIF will be brought into one fund as soon as practicable;
 - c) The RIF will be managed and governed by HGGT as a partnership of the five local authorities;
 - d) The setting up of the RIF will take the new governance arrangements into account and be governed.
19. The establishment of the RIF needs unanimous approval, support and potentially resourcing from all the HGGT Authority partners. Detailed work is currently underway to reshape the HGGT governance which is considering delegations and arrangements for dealing with the future management and allocation of funding from the RIF. If the recommendations of the governance review are agreed and include delegation from the partners to manage the RIF, a more formal, transparent and democratic governance system could be put in place. If this is the case its features, in terms of how collective decisions and strategic management of the RIF are handled will determine the future governance and administration of the RIF. As part of these new governance arrangements mutual resourcing of the RIF and risk share in relation to it will need consideration by the partners, especially if the RIF is brought into and managed as a single fund as soon as possible as advised by Homes England.
20. Once evidence that all the HGGT Authority partners have ratified the RIF MoU it will be submitted to Homes England (Via HCC) to get sign off of the condition which will impact ability to draw down on HIG funds. The milestone for satisfying

this condition by submitting an agreed/signed MoU is the end of November 2021.

21. The MoU is the mechanism through which the partners will initially agree how to operate the RIF pending future governance arrangements and it satisfies Homes England that it is an appropriate way of recycling the HIG money. Detailed work on the setting up of the RIF will need to commence thereafter to ensure that the governance of the RIF is fully included in the new Governance arrangements currently being formulated. This will entail the setting up of working groups that will look at finance, legal and other governance matters. In particular the set up phase will need to address the following:
 - a) The detailed objectives of the RIF
 - b) Its detailed governance arrangements particularly with regard to collective decision making
 - c) Its legal form, its powers, limitations and memorandum & articles
 - d) Its prioritisation criteria and definition of what type of projects it will seek to fund
 - e) Its ability to borrow, grant and lend and the limitations attached
 - f) Its risk appetite in terms of risk sharing or acceptance
 - g) Resources required to administer and run the RIF including technical expertise
22. The RIF will be the mechanism for recycling a multi-million-pound fund of public money and its decisions must be transparent, represent value for money and be robust to legal challenge.

IMPLICATIONS

Environment and Planning (Includes Sustainability)

Not to approve the HGGT RIF MoU would mean that the HGGT Authority partners would be unable to submit the agreed document to Homes England as required under the Grant Determination Agreement for the HIG funding award.

Author: Andrew Bramidge, Director of Strategic Growth and Regeneration

Finance (Includes ICT, and Property and Facilities)

The report sets out clearly that the MoU in respect of the RIF is an integral requirement of the HIG funding agreement. Close consideration will be needed once the MoU is agreed in terms of the establishment of the RIF and associated Governance arrangements in order to limit the risks to Harlow and other partners involved in the delivery of the HGGT. The burden of collection of the S106 funding from developers to enable the RIF to run effectively will largely fall to other partners

and not Harlow simply because the developments are outside of the Harlow planning area.

Author: Simon Freeman, Deputy to the Chief Executive and Director of Finance

Housing

As contained in the report.

Author: Andrew Murray, Director of Housing

Community Wellbeing (Includes Equalities and Social Inclusion)

As contained in the report.

Author: Jane Greer, Director of Communities and Environment

Governance (Includes HR)

The MOU is stated to have no legal effect, its purpose is to provide high level terms and partner working whilst investigating future governance arrangements.

Author: Simon Hill, Director of Corporate and Governance Support

Appendices

Appendix 1 – HGGT RIF MoU

Background Papers

The Town and Country Planning Association's (TCPA) Garden City Principles

<https://www.tcpa.org.uk/garden-city-principles>

Glossary of terms/abbreviations used

HGGT – Harlow and Gilston Garden Town

HIG – Housing Investment Grant

LPA – Local Planning Authority

MoU – Memorandum of Understanding

RIF- Rolling Infrastructure Fund

RRS – Recovery & Recycling Strategy

STC – Sustainable Transport Corridors