

Appendix 1

Decision made by Executive Director (Development) on 31 October 2019 in consultation with the S151 Officer and Head of Legal and Democratic Services

To: Director of Development
Date: 25 October 2019
Report of: Economic Development Manager
Title of Report: Housing Infrastructure Fund (HIF) award to Osney Mead Innovation Quarter

Summary and recommendations	
Purpose of report:	To record an officer decision to enter a contract with Homes England to secure £6.088m for infrastructure. These funds will enable new development at Osney Mead Innovation Quarter under the Housing Infrastructure Fund Marginal Viability Scheme.
Key decision:	Yes
Cabinet Member:	Leader of the Council, Cllr Susan Brown
Corporate Priority:	Meeting Housing Needs, Cleaner and Greener Oxford, Vibrant and Sustainable Economy.
Policy Framework:	Corporate Plan, Oxford Economic Growth Strategy, Housing Strategy
Recommendation(s): That the Executive Director (Development) resolves to:	
1. Delegate authority to the Head of Law and Governance to enter into a funding contract with Homes England to secure £6.088m to contribute to the Oxford Flood Alleviation Scheme (£4.35m), and £1.738m towards pedestrian and cycle infrastructure in the Osney Mead area.	
2. Recommend to Council the inclusion of a budget of £6.088m in the Council's capital programme for Osney Mead Infrastructure enabling works.	

Appendices

Risk Assessment

Introduction and background

1. This urgent decision has been taken in line with clauses 16.4 and 17.9 of the Council's constitution. The Chair of Scrutiny Committee has confirmed his agreement under both clauses below
 - a. (16.4) outside the budget or policy framework the decision is urgent, and it is not practicable to arrange a full Council meeting and
 - b. (17.9) the decision to be taken is both urgent and reasonable and the delay caused by the call-in process would not be in the interests of the Council or the public. Furthermore, the Leader of the Council has been consulted, alongside the Head of Law and Governance and the Head of Financial Services.
2. The £2.3 billion Housing Infrastructure Fund offers funding to local authorities on a competitive basis, for infrastructure to support new homes. The Marginal Viability Fund provides the missing piece of infrastructure funding to get sites allocated for development or existing sites unblocked. The urgent decision is required because the funders, Homes England, have confirmed the deadline of 31 October 2019, at which point, funding is likely to be withdrawn. This left insufficient time to take a report through the normal decision-making process.
3. Osney Mead Industrial Estate is allocated in the draft Oxford Local Plan 2036 for a mixed use development that includes employment uses, academic uses, student accommodation, employer-linked affordable housing and market housing. The development of an innovation quarter is encouraged through the plan policy and links in with the economic strategy for the area.

Main report

4. Oxford City Council has submitted a bid, as the eligible accountable body, to the Housing Infrastructure Fund in partnership with the Environment Agency (EA), Oxfordshire County Council, and University of Oxford to support two pieces of infrastructure to support development at Osney Mead.
5. The total funding award, subject to completion of a funding clarification process by Homes England is £6.088m. £4.35m comprises the remaining sum to fully fund the Oxford Flood Alleviation Scheme (OFAS) and £1.738m comprises the expected funding gap for transport works, to enable adequate cycle and pedestrian route capacity into and around Osney Mead to connect it with the City Centre and the West of Oxford. Funds must be defrayed by 31 March 2022.
6. The first stage of the Osney Mead Innovation Quarter proposals, and subject of the HIF bid, comprises accommodation for early career researchers and graduate students, subject to planning approval. The infrastructure funded under the HIF Marginal Viability scheme helps delivery of this accommodation.
7. OFAS has been designed to significantly reduce flooding for circa 1,500 existing homes in Oxford. A secondary benefit of the scheme is that other areas of land could also benefit from a reduced risk of flooding after the scheme is completed.
8. The OFAS scheme once implemented, together with a multi-million investment from the University in additional on-site flood remediation works informed by a Flood Risk Assessment and Comprehensive Flood Risk Management Strategy, will support development of this area.

9. The draft oxford Local Plan 2036 sets out at paragraph 9.22 that although currently separated from it, a new link across the river should be provided to integrate the Osney Mead site with the city centre. Once the connection is in place, the site should begin to function as an extension of the city centre. It would therefore be suitable for residential use that may include student accommodation and employer-linked affordable housing or market housing, which complements the employment function of the site. These connectivity proposals for the site are also aimed at delivering the strategy to reduce car parking and usage, hence requiring good access by foot, cycle and public transport from the city centre and surrounds.

Other implications

10. Environmental - Whilst enabling brownfield development at Osney Mead (subject to planning), this funding is available to provide a timely contribution to the delivery of the Oxford Flood Alleviation Scheme. It will also contribute to increased use of Sustainable Transport modes in Oxford city centre and surrounds.

Financial implications

11. The City Council will be the Accountable Body, receiving and then contracting funds to partner organisations including the Environment Agency and Oxfordshire County Council. No further direct financial contribution is required, albeit Oxford City Council will need to ensure no financial risk from contracting awarded funds to other partners in the unlikely event of clawback by Homes England for non-delivery by a partner, for example.
12. In the event that funding was not drawn down due to the partners being unable to satisfactorily meet the requirements of the funding clarification process, e.g. viability or deliverability issues on the homes, or infrastructure, this may leave a possible funding gap for OFAS.
13. Funding can be drawn down in advance for the first three quarters of the year, and in retrospect for the final quarter. The likely annual grant drawdown is profiled below. This may still change once detailed design and procurement has taken place:
 - a. 2019-20: £217,250
 - b. 2020-21: £869,000
 - c. 2021-22: £5,001,750
 - d. Total: £6,088,000.

Legal issues

14. Section 1 of the Localism Act 2011 provides the Council with the power to do anything an individual may do, subject to a number of limitations. This is referred to as the "general power of competence". A local authority may exercise the general power of competence for its own purpose, for a commercial purpose and/or for the benefit of others. This general power of competence provides sufficient power for the Council to apply for and accept the funding described in this report and to procure a contractor/contractors to undertake the works described.

15. Oxford City Council will be responsible for ensuring that the funding awarded is spent in accordance with all applicable legal requirements, to include state aid, public procurement law, wider public law (including the Public Sector Equality Duty), and planning law. Oxford City Council must comply with its obligations under the overarching funding agreement, including with respect to delivery of objectives within agreed timeframes. Any procurement required as a result of the funding must be conducted in accordance with the Council's Constitution and the Public Contracts Regulations 2015 as the case may be.
16. The Pre-contract conditions have to be complied with to Homes England's satisfaction. The pre-drawdown conditions will need to be complied with, in order to draw down the funds. A funding contract has been agreed between Homes England and Oxford City Council, following a detailed funding clarification process. As indicated above, it Oxford City Council must ensure that any conditions attached to the funding contract are complied with and tracked.
17. Oxford City Council will then need to enter into contracts with the Environment Agency, the University of Oxford and possibly Oxfordshire County Council to commit HIF funds to ensure delivery of the funded infrastructure. It will be essential that Oxford City Council is protected against the unlikely event of clawback for non-delivery or any other contractual breach that presents a financial risk to the city council. An independent state aid assessment has been undertaken by external solicitors as required by Homes England. It confirms that the use of the funding does not breach state aid obligations.

Level of risk

18. The Risk Register is attached. The risk of not securing the funds would have consequences for the delivery timetable of OFAS, as well as the regeneration plans and sustainable infrastructure investment at Osney Mead.

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Background Papers: None

Risk Register

Risk Register					Date Raised	Gross		Curren		Resid		Comments	Controls				
Title	Risk description	Opp/ threat	Cause	Consequence		I	P	I	P	I	P		Control descriptio	Due date	Status	Progre ss	Action Owner
Funding withdrawn	Deadline of 31st Oct for contracting not met	Threat	Not getting to contract ahead of deadline.	Funding is lost	21-10-19	4	3					We have been working closely with partners from the outset of the funding application to manage this risk	Close monitoring and delivery of the funding clarification process in dialogue with partners	Oct 19		80	Matt Peachey
State Aid issues	funding deemed as ineligible due to state aid	Threat	funding assessed to distort the market	Funding cannot be awarded	21-10-19	4	1					Unlikely scenario as State Aid Assessment has been completed	Undertake state aid assessment	Oct 19		100	Matt Peachey
Non delivery by the council or partners	clawback of funds from Homes England that leaves Oxford City Council liable	Threat	Homes or infrastructure not delivered	Financial cost	21-10-19	4	2					Legal protection should be achievable. Funding can be drawn down when we have certainty	Entering into contracts with partners that minimise or eliminate the risk of direct clawback	March 2020		20	Matt Peachey

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