

To: Cabinet
Date: 9 September 2020
Report of: Executive Director for Development
Title of Report: Implementation of the Housing Infrastructure Funding for Oxford North (Northern Gateway)

Summary and recommendations	
Purpose of report:	This report is to seek approval to enter into an agreement with Thomas White Oxford (“TWO”) to deliver infrastructure to facilitate the delivery of housing at Oxford North.
Key decision:	Yes
Cabinet Member:	Councillor Alex Hollingsworth, Cabinet Member for Planning and Housing Delivery
Corporate Priority:	More Affordable Housing
Policy Framework:	Northern Gateway Area Action Plan
Recommendations: That Cabinet resolves to:	
<p>1. Delegate authority to the Executive Director for Development, in consultation with the Cabinet Member for Planning and Housing Delivery, and the Head of Law and Governance, to:</p> <ul style="list-style-type: none"> a) finalise the legal agreement with the developer Thomas White Oxford (“TWO”); b) enter into the legal agreement to secure the delivery of the Housing Infrastructure Funding (“HIF”) funded infrastructure at Oxford North; c) secure the HIF funding and implementation of the HIF agreements, including the provision of funding to TWO; and d) agree any changes necessary to the HIF agreement with Homes England to facilitate the securing of the HIF funding, the delivery of the infrastructure and the recouping of funding 	

Appendices	
Appendix 1	Legal & Financial Advice - Confidential
Appendix 2	Risk Register – Confidential

Introduction and background

1. The Government launched a funding stream, known as Housing Infrastructure Funding (HIF) in 2017, to support and speed up the delivery of housing. This funding was subject to a bidding process, and lower tier authorities could bid for up to £10m where schemes had viability issues that were delaying the delivery of housing.
2. The Council agreed to bid for funding and was successful in securing £10m to fund early infrastructure measures at Oxford North (ON) to open up the site and support delivery of the residential development. Following a Cabinet decision in November 2018 the Council entered into a HIF agreement with Homes England (HE) to secure the funding.
3. A resolution to grant planning permission for the development at ON was made in December 2019 subject to completion of a S106 Agreement. This followed extensive viability testing of the development scheme. Negotiations on the associated Section 106 agreement have been continuing and a draft agreement is currently circulating between the parties.
4. The HIF funding is to support early infrastructure provision on the ON site to facilitate the delivery of the development scheme, and with progress towards securing planning permission, detailed arrangements need to be put in place to deal with the HIF funding.

HIF funding requirements

5. The approach to spending the HIF funding and delivering the HIF infrastructure, as identified in a report to the Cabinet in November 2018, is to enter into an agreement with TWO to enable it to deliver the infrastructure on the land under their control. A legal agreement is required with TWO to ensure the appropriate requirements from the HE agreement with the Council are passed on to the developer to protect the Council and ensure the infrastructure is delivered. This report is seeking approval to enter into that agreement and ensure its implementation.
6. To claim HIF funding, milestones attached to the agreement need to be met, together with drawdown conditions. Work has commenced with HE and TWO to meet these requirements. Once milestones and drawdown requirements are met claims can be made to HE to access the HIF funding. Evidence of capital spend will be required to access the funding, which will then be paid to the Council in tranches reflecting the work that has been undertaken. The proposal is to have an agreement with TWO that would enable the funding to be claimed from Homes England and passed to TWO to support the delivery of the infrastructure. The infrastructure will help to open up the site and de-risk the early stage of the development by forward funding infrastructure which is needed for housing

delivery. This assists the developer by reducing the finance cost at the beginning of the development prior to income being achieved.

7. The agreement between HE and the Council requires the repayment of the HIF funding. However it also allows for further viability testing of the scheme when planning permission is granted. Should the viability testing show the scheme is less viable than at the time when the HIF funding was agreed, HE may remove the requirement to repay the funding. In these circumstances the funding would only be required to be repaid if the development makes an increase in profit, beyond that identified in the viability testing. This testing is entirely separate from that agreed as part of the resolution to grant planning permission, which established a mechanism for the upwards-only adjustment of the proportion of social housing on the site if the testing showed that the scheme was more viable than at the point that planning permission was granted. The agreement that the Council has with TWO needs to allow for both the current requirement to repay the HIF and a potential change as a result of further viability testing.
8. In entering into an agreement between the Council and TWO, details of the mechanism and timing of any repayment need to be agreed with Homes England as well as with TWO. At the time the funding was secured it was provisionally agreed between all the parties that repayment would be at the completion of the development. Funding recovered, either the sum of £10m, or if that is not required any funds arising from increased profit, can be retained by the Council to support further housing delivery, subject to agreement of the details of the proposed spend with Homes England by no later than 31 December 2028.
9. The HIF funding needs to be drawn down by March 2022. Should the Council not reach an agreement with TWO it will not be possible to draw down and spend the HIF funding at Oxford North under the terms of the current agreement that the Council has with HE. Work to date with HE and TWO has indicated a willingness on all sides to be able to work together to ensure the HIF delivers the intended infrastructure.

Other implications

10. The proposed section 106 agreement associated with the planning application for the ON site seeks to secure the provision of 35% affordable housing, following extensive viability testing; however, as this is below the 50% sought within the Council's adopted policy, provisions have been included in the agreement to secure additional affordable housing should the profitability of the development increase.

The repayment of the HIF funding will be a cost to the development and could reduce the amount of profit achieved, and therefore the potential to deliver additional affordable housing that the S106 is looking to secure. However, if repayment of HIF is from increased profit, the proposal is to prioritise on site affordable housing through the S106 mechanism over the repayment of HIF. Formal agreement of this approach is being sought from Homes England. However, it is worth noting that any HIF funding recovered can be used by the Council, subject to agreement with Homes England, to provide further housing, including additional affordable housing.

11. Since the signing of the HIF agreement between the Council and HE there has been some changes to the programme for development at Oxford North.

Alterations to the milestones and conditions within the agreement have been discussed with HE who have indicated they are willing to amend the agreement to reflect the changed milestones. Delegation is sought to enable these changes to be agreed as necessary.

Financial implications

12. The HIF funding is provided through Homes England and is to be used to fund the provision of infrastructure, which would be delivered through TWO. State aid advice has been received on the proposals. Other costs will arise from the drafting of the legal agreement, undertaking viability appraisals, and administering the HIF agreement. Where appropriate these costs will be sought from TWO and the staff cost can be met from existing budgets.

Legal issues

The Council must ensure that any obligations between it and Homes England (HE) are reflected in the proposed Agreement with TWO, to protect the Council. HE must also be in agreement with this.

13. The Risk Register is attached at appendix 2.
14. The Council has sought State Aid advice to ensure it does not breach State aid rules. Further State aid advice is required by the HE agreement once planning permission has been issued and this will address any changes from the original advice. The legal agreement with TWO will ensure that any risk associated with the HE agreement is passed on to TWO where possible. If repayment is linked to increase in profit there is no guarantee that increased profits will be achieved and therefore no repayments may be made.
15. The failure to secure the HIF funding may impact on the delivery of the Oxford North development and the level of affordable housing that can be delivered.

Equalities impact

16. The HIF funding supports the implementation of the Local Plan policy for Oxford North. The Local Plan has been the subject of Equalities Impact Assessment during its formulation.

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Background Papers: None