

Appendix 1A

To: Cabinet
Date: 9 December 2020
Report of: Executive Director (Development)
Title of Report: Meanwhile in Oxfordshire

Summary and recommendations	
Purpose of report:	To seek approval to enter into a £1.875m Funding Agreement with Oxfordshire Local Enterprise Partnership to support the ‘Meanwhile in Oxfordshire...’ project and to procure an operator to identify fit out and let vacant commercial units across the county.
Key decision:	Yes
Cabinet Member:	Councillor Susan Brown, Leader and Cabinet Member for Economic Development & Partnerships
Corporate Priorities:	Foster an inclusive economy; Support Flourishing Communities
Policy Framework:	Council Strategy 2020-24.
Recommendations: That Cabinet resolves to:	
<ol style="list-style-type: none"> 1. Delegate authority to the Executive Director-Development, in consultation with the Council’s Section 151 Officer, the Head of Law and Governance and the Leader of the Council, to agree and enter into grant funding arrangements and contractual terms with OxLEP for £1.875m in Getting Building Fund funds for the delivery of ‘Meanwhile in Oxfordshire...’; 2. Draw down the £1.875m and delegate authority to the Executive Director – Development, in consultation with the Council’s Section 151 Officer, the Head of Law and Governance and the Leader of the Council to enter into contract with an operator, subject to an appropriate procurement process; and to allocate appropriate internal project management resource to deliver the project from the allocated funding; and 3. Delegate authority to the Executive Director-Development to take any further steps necessary to comply with the grant funding conditions and to deliver the project within the identified budget in order to meet the challenging timescales of the project including explicit permission to enter 	

into an OJEU compliant procurement process and taking account of any prevailing UK legislation at time of procurement to contract a Meanwhile Operator.

Appendices

Appendix 1	Risk Register
Appendix 2	Equalities Impact Assessment

Introduction and background

1. Oxford City Council has been allocated £1.875m to deliver a county-wide scheme to tackle the predicted significant increase in vacant units in Oxford (the city and its other neighbourhood centres) and Oxfordshire’s market towns.
2. The ‘Meanwhile in Oxfordshire...’ project is to be funded through the “Getting Building Fund” as part of a County-wide £8.4m programme, managed by OxLEP to accelerate the UK’s economic revival through the delivery of capital projects by early 2022.
3. The COVID-19 pandemic has created significant uncertainty in the property market. Vacant unit numbers increasing, with more predicted to come onto the market if COVID-19 restrictions continue. The ‘Meanwhile in Oxfordshire...’ project is targeted to help tackle the anticipated rising number of vacant commercial units, to diversify the “mix and offer” of businesses. This should also lead to an increase in footfall and employment opportunities to aid high street recovery.
4. While the proposal is a county-wide scheme, Oxford City Council has taken the lead on developing the project, working closely with OxLEP and the other district councils. As such, the City Council is well placed and appropriate to act as the Contracting Authority to contract with OxLEP. This will include the internal project management.

The project

5. This ‘Meanwhile in Oxfordshire...’ project will fund low cost refurbishment work, for around 100 vacant units across the County into a useable state, to allow for the activation of vacant or underused space and the wider animation of the high street and economic centres.
6. Further work is underway to refine the cost per unit and likely number of vacant units, or spaces that will be supported. This will be confirmed in the contract between the City Council and OxLEP.
7. The proposal is for the City Council to procure a specialist operator to deliver the project. The operator would work closely with the City and district councils and be responsible for:

- I. Identifying suitable vacant properties and work with landlords to secure them for meanwhile uses.
 - II. Identifying suitable occupiers against locally agreed criteria, but to include start-up, expanding and diversifying businesses, arts, cultural and creative organisations, community groups and social enterprises.
 - III. Entering into meanwhile leases with landlords and enter into lease/licenses with occupiers.
 - IV. Agreeing affordable rent levels with the City and district councils to cover the costs of the operator during the project and as part of the future business model once capital funding has ceased.
 - V. Commissioning and overseeing light touch fit out work to make the building safe and allow occupation for the meanwhile activity and ensure the premises is handed back to its landlord in an agreed condition.
8. The City Council and its district partners are already aware of a number of key opportunities that could be supported by this project, as well as potential tenants. The initial stage of the 'Meanwhile in Oxfordshire...' project will be for the operator to review, update and add to these known opportunities and potential tenants, working in partnership with the city and districts once engaged.
 9. OxLEP grant will be spent in 2020-21. It is hoped that the operator will be able to continue beyond this period, by developing a sustainable business model based on charging an affordable rent to some or all of their tenants.
 10. The OxLEP funding proposal identifies key objectives to be met by the projects including; promoting economic growth in Oxfordshire by providing much needed premises for new and small businesses to operate, working with partners to support start-ups and to provide space for small businesses in key sectors important to Oxfordshire's economy including: the creative sectors, social enterprises and wider knowledge based businesses. By providing affordable meanwhile space to businesses the project will provide:
 - Employment opportunities; directly and indirectly resulting from the Project
 - Enterprise Incubation Support, offered by the Meanwhile Operator
 - Economic Recovery Support (Increased footfall to our urban centres, in turn increasing spend)
 - Ecosystem diversification, with a more diverse mix of business types operating in the urban centres across the City and Districts
 11. This will enable aspects of the inclusive economy agenda, by bringing forward affordable space and removing barriers for certain entrepreneurs in less well funded sectors (including local businesses that would be new to the 'high street', social enterprises, co-operatives, creative arts, digital, etc.). As part of the feasibility work for each scheme officers will look at options that include contracting with operators to let and operate the development to maximise outcomes.
 12. The focus would be to help to increase retail footfall, decrease vacancies and help to diversify the mix and offer as part of high street recovery. This will involve supporting business types that diversify the use mix in each location, and on supporting local, cultural, arts & crafts, community & social enterprise

organisations, co-operatives and wider businesses to find and activate units, to help bind communities together and encourage footfall.

13. OxLEP is keen to explore the potential for a creative workspace hub and a range of different workspace typologies, including co-working, studio, workshops etc. The funding will therefore be used to enable aspects of the inclusive economy agenda, by bringing forward affordable and accessible space through increased availability and by removing barriers for certain entrepreneurs in less well funded sectors, including those listed above and local businesses that would be new to the 'high street'.
14. Governance-'Meanwhile in Oxfordshire...' project will be governed by an officer steering group taken from all participating Councils to oversee allocation of spend, agreeing allocation criteria and rent levels etc. This will be set out in the contract with OxLEP. City Council officers will work with the Leader of the Council, as Cabinet Member for Economic Development, plus the relevant Member Champions (i.e. Co-operatives Champion and Small business Champion) to help shape the project at the City level. A full member briefing will be undertaken once the operator is appointed to inform the project's development. The operator procurement will be subject to entering into the contract with OxLEP
15. The anticipated programme for delivery of works is:
 - Procure operator– November 2020 to January 2021
 - Jan 2021–Funding Agreements with OxLEP-signed
 - Appoint operator–January 2021
 - Feb-Nov 2021–Project delivery
 - Dec 2021-Jan 2022–Project Completion

Financial implications

16. All costs will be met by the £1.875 million funding grant from OxLEP, for which provision has yet to be made in the Council's capital programme. The operator will be required to meet costs that are identified to be revenue. This will be set out in the procurement documents when commissioning the operator and will be assessed as part of the review of their submission.
17. The internal project management costs for this project, with Oxford City acting as the Contracting authority will be recouped from the OxLEP grant. The estimated projected total cost across the 'Meanwhile in Oxfordshire...' project is £150,000, although this will be confirmed as part of the contract with OxLEP.
18. An initial State Aid assessment has been undertaken and this has indicated that the Project can be funded through the grant. This will be confirmed prior to entering into contract with OxLEP.
19. It is important to note that the funding is time limited. The grant will be spent on capital works between January and November 2021.

Legal issues

In undertaking this activity the Council is relying upon the General Power of Competence in Section 1 (1) of the Localism Act 2011 which provides that "a local authority has power to do anything that individuals generally may do" A local authority

in exercising the general power is permitted to do it in any way whatever, including(c) power to do it for, or otherwise than for, the benefit of the authority, its area or persons resident or present in its area. The Council's aims in undertaking this activity are set out in paragraphs 10 to 13 above.

20. The Council has commissioned Browne Jacobson LLP to provide an independent state aid assessment which is required as a pre-condition of the funding agreement with OxLEP.

21. Browne Jacobson LLP has advised:

22. The Councils will not be acting as an undertaking for the purposes of the project and will be passing on any aid. They will not be receiving any net benefit from the funding. Accordingly, they will not receive State aid.

23. If the operator(s) and the providers carrying out the fit out work are procured by open, non-discriminatory tenders to ensure that they are paid no more than a market price, they should not be receiving State aid.

24. The occupiers of the units, depending on what they do, may not be economic undertakings. Even if they are, the aid provided to them may not affect trade between Member states. It will depend in each case. If all the State aid tests are passed, then we recommend that the De Minimis Regulation is applied to avoid illegal State aid.

25. The best route to avoid illegal State aid to landlords will be to ensure that the operator(s) agree terms for the short term leases that are no more favourable than market rate. This will include consideration of whether the fit out rates will continue to be of benefit once the leases have expired, how much rent is payable to the landlord and whether this is influenced by the deferral of the landlord's liability to pay business rates on the property in question. If the rate is not a market rate, then consideration should be given to whether the aid may affect trade between Member states (although this is more likely than with the occupiers). If all the State aid tests are passed, then we recommend that the De Minimis Regulation is applied to avoid illegal State aid.

26. It is therefore considered possible to structure this arrangement in such a way as to avoid illegal state aid or in the event that there is no other State aid compliant route to rely upon the Commission Regulation 1407/2013 on de minimis aid allowing a beneficiary of State aid to receive up to €200,000 over 3 fiscal years (the Quota) without notification to the EU and without it being considered illegal. A declaration in advance of aid being provided would be required from each recipient that this applied to.

27. Any procurement exercise should be undertaken in compliance with the Public Contract Regulations 2015 and the Council's Contract Rules.

Level of risk

28. Refer to the attached Risk Register Appendix 1

29. Oxford City Council is required to enter into contractual Funding Agreement with Oxfordshire Local Enterprise Partnership for "Getting Building Fund" Funding by the end of February 2021 or funding will be withdrawn. The Council is putting in place all the procedures to ensure timely completion.

30. Under the terms of the OxLEP agreement, the project timeframes state the Council must spend the money and deliver the outcomes by end of January 2022. The Council will mitigate these risks by commissioning an appropriately experienced meanwhile operator.
31. Co-ordination with partners, OxLEP and the Districts, will be a key factor and a risk and will be managed by incorporating a strong governance structure with appropriate MOU's or Articles of Association and regular well managed meetings.
32. State aid implications need to be worked through and we have commissioned legal advice (See Legal section)
33. In the event the project is unable to procure a suitably qualified meanwhile operator- the project would need to be downsized depending on available resources and delivered separately by each district contracting with the OxLEP.
34. In the event that the project cannot deliver the full number of units, or spend all the money within the agreed timescales, we have agreed with the OxLEP a 'proportionate approach' which will be clarified/explicit in the contract. This would mean that the costs incurred in the delivery of the project- so long as spent in line with the project scope and contract- will not be subject to claw back if not all project outcomes are met.
35. In the event there are delays of the fit out works to the retail units due to Covid-19, or other unforeseen circumstances, these would be mitigated by early appointment of the Meanwhile operator and good project management.

Equalities impact

36. Refer to the Equalities Impact Assessment Appendix 2

Conclusion

37. The OxLEP Getting Building Fund funding will enable the Council to support business types that diversify the use mix in each location, and support local, cultural, arts & crafts, community and social enterprise organisations- and wider businesses- to find and activate units, to help bind communities together and encourage footfall by bringing forward affordable opportunities to support the inclusive economy agenda, removing barriers for certain entrepreneurs in less well funded sectors.

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Background Papers: None

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