

To: Cabinet
Date: 13 September 2023
Report of: Executive Director (Development)
Title of Report: Deeds of Variation for Housing Infrastructure Funding for Osney Mead and Blackbird Leys

Summary and recommendations	
Purpose of report:	The report provides an update on progress on the Housing Infrastructure Funding identified for Osney Mead and Blackbird Leys and seeks approval to enter into two deeds of variation with Homes England and agreements with partners to facilitate the claiming of the funding.
Key decision:	Yes
Cabinet Member:	Councillor Ed Turner, Deputy Leader (Statutory) and Cabinet Member for Finance and Asset Management
Corporate Priority:	Delivery of more, affordable housing
Policy Framework:	Oxford Local Plan 2036

Recommendations: That Cabinet resolves to:	
1.	Delegate authority to the Head of Regeneration and Economy in consultation with the Deputy Leader (Statutory) – Finance and Asset Management; the Head of Financial Services; and the Head of Law and Governance to finalise the drafting of, and subsequent enter into, a Deed of Variation with Homes England in respect of the HIF funding for Osney Mead;
2.	Delegate authority to the Head of Regeneration and Economy in consultation with the Deputy Leader (Statutory) - Finance and Asset Management; the Head of Financial Services; and the Head of Law and Governance to finalise the drafting of agreements and enter into ancillary grant agreements with Oxfordshire County Council and the Environment Agency and any other steps necessary to enable or facilitate the claiming of the HIF funding;
3.	Delegate authority to the Head of Regeneration and Economy in consultation with the Deputy Leader (Statutory) – Finance and Asset Management; the Head of Financial Services; and the Head of Law and Governance to finalise the drafting of, and subsequent enter into, a Deed of

Variation with Homes England in respect of the HIF funding for Blackbird Leys; and

4. **Delegate authority** to the Head of Regeneration and Economy in consultation with the Deputy Leader (Statutory) – Finance and Asset Management; the Head of Financial Services; and the Head of Law and Governance to finalise the drafting of an agreement with Peabody, either as a separate agreement or as part of the Development Agreement (between Peabody and the Council) and to take any other necessary steps to enable or facilitate the claiming of HIF funding associated with Blackbird Leys Regeneration scheme.

Appendices

Appendix 1 (Confidential) Homes England letter re Osney Mead

Appendix 2 Risk Register

Introduction and background

1. The Council bid, and was awarded, Housing Infrastructure Funding (HIF) from Homes England (HE) in 2019. The funding was awarded on the basis that it would support schemes that were marginally unviable up to £10m. The funding was targeted at the delivery of infrastructure to unlock housing sites. The Council was awarded £10m for Oxford North, £6.25m for Blackbird Leys and £6.09m for Osney Mead (HIF schemes). The Council entered into funding agreements with HE which impose obligations on the Council's use of the funding.
2. To claim the funding in each case evidence of spend is required and ultimately if the Council are unable to fulfil their obligations under the agreements and housing is not delivered the HIF funding agreements include provisions that the funding can be clawed back by Homes England. The original deadlines for claiming the funding have passed but Homes England have indicated that funding will be available up to March 24, subject to Deeds of Variation to the existing agreements being agreed.
3. For each of the HIF schemes it has been complex in seeking to comply with the terms of the agreements to be able to drawdown funding and this report provides and update on the position for the schemes at Osney Mead and Blackbird Leys.
4. The HIF funding (for the schemes at Osney Mead and Blackbird Leys) originally had deadlines for claiming in 2022/23 but Homes England now have the ability to extend the deadline to March 2024, through Deeds of Variation. The timescales within which the HIF funding has to be drawn down and spent are tight and there is a risk that it will not be possible to drawdown all of the funding.

Osney Mead HIF

5. The Osney Mead HIF is to fund £4.35m of works related to the Oxford Flood Alleviation Scheme (OFAS) and £1.7m for pathworks from Osney Mead. The housing delivery is to be at Osney Mead and will be undertaken by the University development partner and this will follow on from the proposed works funded by the HIF.

OFAS Funding

6. There have been two Cabinet reports related to the Osney Mead HIF in January 2021 and November 2022 and delegation was granted to the Director of Development, Cabinet member for Planning and Housing and Heads of legal and finance to enter into a Deed of Variation (DofV) with Homes England and agreements with the County Council, Environment Agency and Oxford University to enable some of the HIF funds to be passed to these parties.
7. The approach to the delivery of the OFAS infrastructure, was to use some of the HIF funds for elements of the Kennington Bridge replacement that facilitates OFAS, to be funded. An agreement was sought with the EA over the delivery of the wider OFAS scheme and an agreement with the University of Oxford to deliver the housing. Since the report was considered by Cabinet in November 2022 a DofV has been received from Homes England and negotiations have taken place with the County Council, Environment Agency and University to progress agreement on the use of the HIF funds.
8. Oxfordshire County Council have advised that Planning determination for Kennington Bridge project is expected in late November 2023. The construction is expected to start in April 2024. This project will spend £2.0m on design by 31st March 2024. However, the Environment Agency (EA) are making good progress on the wider scheme and shall be able to provide evidence to support a claim for remaining £2.35m funding. As a result it is proposed that the draft agreements to be entered into with the EA will be drafted flexibly to allow claims to be made as appropriate.
9. The University of Oxford, (who are to deliver the housing on Osney Mead), have not felt able to commit to covering the potential clawback of funds if the housing is not delivered within the HIF timescales. For this HIF scheme the drawdown and spend of the funding would take place before the housing is due to be delivered. If the housing is not delivered the City Council is ultimately carrying the risk relating to the repayment of the funding should Homes England seek a clawback of funding. To mitigate this risk the draft DofV has allowed for a longer period for the housing (post graduate) delivery with a deadline proposed of 2034. HE have provided a letter identifying that HE would work with the Council, acting reasonably, regarding the funding if there was a delay in delivering the funding. Early masterplanning work is currently being carried out by the University joint venture with L&G and therefore it is considered that the risk is limited and the benefits of the HIF funding is considerable in supporting the delivery of OFAS and the pathworks.

Pathworks Funding

10. The pathworks funding is not sufficient to undertake all the path improvement originally envisaged and therefore it has been agreed to use the funding for the pathworks in connection with the Oxpens River Bridge. As the path works will be delivered at the end of the bridge construction discussions have taken place with Homes England around the ability to claim funds related to the design of the paths and other preliminary works.
11. Since the delegations were approved by Cabinet in January 2021 and November 2022, to enter into the DofV with HE and separate agreements with the County Council, Environment Agency and Oxford University, the circumstances have evolved and it is no longer intended to seek an agreement with the University of Oxford related to the delivery of housing. Legal advice have advised that due to this

change in circumstances, the HIF funding arrangements should be considered again by the Cabinet.

12. The alternative options considered were not to continue to seek to claim the HIF funding but this was rejected as it would impact the delivery of the OFAS scheme and the pathworks associated with connecting Osney Mead to the city centre. Both of which are significant pieces of infrastructure that are still very much needed.

Blackbird Leys HIF

13. The HIF for Blackbird Leys supports the delivery of early infrastructure for the regeneration scheme. This cannot be claimed until planning permission is achieved. A planning application has recently been considered and resolved to be approved subject to the completion of a legal agreement. Once planning permission is issued it is proposed to start work promptly. A DoFV to the HIF agreement is required to extend the funding period to enable claims up to March 2024 and HE have agreed to the extension in principle. A scheme has been put together that identifies that it is possible to draw the HIF funding once a Planning Permission has been granted. The spend relates to land acquisition, design works and highway and service infrastructure.
14. Negotiations have taken place with Peabody, our development partner at BBL, over the sharing of risk of clawback if the housing is not delivered but the funding has been claimed and spent. Peabody will carry the risk if drawdown commences and it is not possible to drawdown all the HIF funding. They will not seek the gap funding from the Council. The Council will carry the risk of clawback if housing is not delivered after the funding has been drawn down. It is intended that this agreement is reflected in the revisions that are required to the Development Agreement that are subject to a separate decision. Cabinet authority is needed to enter into the agreements and this report seeks that authority in relation to the HIF
15. The alternative to entering into a DoFV and sharing risk with Peabody is that the HIF funding is not claimed. As this would impact on the viability of the scheme and the delivery of affordable housing and facilities at Blackbird Leys this option was rejected.

Financial implications

16. HIF supports the delivery of infrastructure where viability is marginal to facilitate housing delivery. As external funding it is supporting the Council achieve its objectives related to housing delivery.
17. The HIF agreements include schedules of requirements that need to be met and include the option for HE to clawback funding if the housing proposed is not delivered. For Blackbird Leys the maximum amount that could be clawed back is £6.25m and for Osney Mead the amount is £6.09m in the worst case scenario. Whilst this risk cannot be overlooked HE have confirmed they would act reasonably if the circumstances were to arise. Where possible this risk is being shared with partners to reduce the risk to the Council. Mitigation is being put in place where possible. At Blackbird Leys the funding is not being drawn down until the planning permission is in place and a contractor appointed to deliver the first phase housing. The risk is therefore limited for the first phase and the second phase could return to the Council to deliver if not viable for Peabody. The EA and County (whilst in receipt of funding) are sharing the risk re the delivery of the OFAS scheme and the

deadline for the delivery of the housing has been extended to minimise the risk that there is a breach of the agreement.

Legal issues

18. The HIF funding is subject to standard HE agreements and HE have led on drafting of DofVs. The Council's legal team have provided support and drafting for agreements with partners. The agreements are complex but legal advice has been obtained to ensure understanding of the agreements and to ensure that legal risks are minimised where possible.

Level of risk

19. The two main areas of risk are, the inability to be able to drawdown the funding in time resulting in a loss of funding and the risk of clawback if the housing is not delivered.

Risk of losing funding

20. Even with the extended deadline the timing is tight to be able to evidence spend, claim and drawdown funding. It is also in each case necessary to comply with the HIF agreements pre commencement conditions and milestones.
21. There is a risk that not all the identified HIF funding will be able to be claimed leaving a gap in the funding for the schemes, which in some cases will leave them unviable to proceed.

Clawback of funding after spend

22. There is ultimately a risk of clawback if the funding is drawn down but the housing is not delivered. These risks are discussed under financial implications.

Equalities impact

As this report relates to the securing of funding that the Council has already agreed to accept, and schemes which have been or will be considered on their merits elsewhere, it is not considered that this report raises any equalities issues in itself. The projects themselves will be subject to an EQIA. If it is not possible to secure the HIF funding it could impact on the delivery of the schemes and the benefits they bring to the City and its residents.

Carbon and Environmental Considerations

23. This report does not give rise to any carbon or environmental considerations. The environmental and carbon implications of the schemes themselves will be considered as part of the scheme development and will be considered on their merits elsewhere.

Conclusion

24. HIF funding supports the delivery of infrastructure to enable housing delivery. For Osney Mead it is supporting the delivery of OFAS and improved connectivity for the benefit of future development at Osney Mead but also both have wider benefits for the city. The HIF for Blackbird leys is enabling the regeneration proposals to move forward supporting the delivery of housing.

25. The amendment of the existing HIF agreements and agreements with partners where the funding is to be used by them, is necessary to enable the funding to be accessed.

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Background Papers: None