



ADUR & WORTHING
COUNCILS

Joint Strategic Committee
8 October 2019
Agenda Item 11

Key Decision [No]

Ward(s) Affected: Various ADC

Grant Funding to assist the delivery of Key Strategic Housing sites in Adur

Report by the Director for the Economy

Executive Summary

1. Purpose

- 1.1 This report seeks agreement to enter into a Funding Agreement with Homes England and the Coast to Capital Local Enterprise Partnership (LEP) to secure significant grant funding to help deliver two key strategic housing sites at New Monks Farm and Free Wharf, Shoreham Harbour.
- 1.2 The funding will help to secure public infrastructure in the form of a new junction on to the A27 for New Monks Farm and a new flood defence, and associated public realm at Free Wharf.
- 1.2 In addition, the report seeks agreement to enter into side agreements with the relevant developers to indemnify the Council from any risks and to add the grant funding to next year's Capital programme.

2. Recommendations

2.1 The Joint Strategic Committee is recommended to:

- a. To authorise the Director for the Economy to enter into funding agreements with Homes England and the Coast to Capital LEP to assist the delivery of public infrastructure in connection with the New Monks Farm and Free Wharf strategic development sites.
- b. To authorise the Director for the Economy at the same time to enter into side agreements with New Monks Farm Ltd and Southern Housing to indemnify the Council against any future claims for non compliance with any aspect of the funding agreements.
- c. To recommend to Adur District Council the inclusion of these projects totalling £15.7 million in the capital programme fully funded by external funding.

3. Context

New Monks Farm

3.1 Members may recall that a number of bids were made to the LEP from Local Growth Funding to support a number of projects across Adur and Worthing. A total of £21 million was secured through the submission of outline business cases in 2016. Members considered a report in connection with the Decoy Farm funding award earlier this year.

3.2 For New Monks Farm, an award of £5.7 million was made for the initial outline business case and the detailed Business Case was formally signed off by the LEP in 2018. Whilst, the project has been delayed by the Secretary of State (considering whether to call in the application) it is expected that the planning permission will be finally issued in the next few weeks or so following the completion of the legal agreement. The developer, New Monks Farm Ltd hopes to make a start on site before the end of the year.

Free Wharf

3.2 In late 2017, the Council applied on behalf of Southern Housing for £10 million funding from the Government's Housing Infrastructure Fund (Marginal Viability

Fund programme). This followed the grant of planning permission for 540 homes, 25,000 ft² of commercial space, a new flood defence wall and public realm on part of the Western Harbour Arm. The bid was approved in February 2018 and work has recently commenced on site undertaking some of the preparatory ground works.

4. Proposal

- 4.1 The £5.7 million LEP funding for the New Monks Farm development is to be used to help deliver the new roundabout junction on the A27 which would serve the proposed Ikea store, 600 residential dwellings and the new employment site at Shoreham Airport.
- 4.2 The £10 million HiF funding for Free Wharf is to deliver the new flood defence (including a new podium deck) and public realm (riverside cyclepath).
- 4.3 In both cases, there is a need to enter into a Funding Agreement with the relevant funding bodies (LEP and Homes England). Amongst other matters the funding agreement commits the Council/Developer to use the funds for their intended purpose i.e the delivery of infrastructure that will benefit the public and that any funds are returned if used for any other purposes.
- 4.4 As the Council is not directly involved with either project it will be, effectively, passing money directly on to the developers to ensure delivery of essential infrastructure. As such, your Officers have had some concerns about any liability falling onto the Council, particularly if any funds have to be repaid.
- 4.5 A side agreement with the Developers is therefore necessary to ensure that there is no ongoing risk to the Council. The funding bodies cannot pass the funding directly to the developers and the Council is effectively the accountable body. It will be necessary, therefore, to provide ongoing monitoring of the projects and some level of project management and oversight of funding payments. This work will be carried out using existing staff resources.
- 4.6 As the funding will be coming into the Council it will also be necessary to add these projects to the Council's Capital Programme, albeit the Council is not putting any additional funds into the projects.

5. Issues for consideration

- 5.1 As stated above the main issue for consideration is protecting the Council from any claim from the funding bodies in connection with any potential misuse of funding or breach of any of the funding conditions. As the Developer is not a party to the funding agreement there is a need to indemnify the Council for any potential risks of action and both Developers have agreed, in principle, to enter into such agreements.
- 5.2 Homes England has confirmed that similar arrangements are in place between other local authorities and developers where the Council is not delivering the project. A draft funding agreement is currently being drafted with the relevant funding partners.
- 5.3 There are state aid rules which have to be taken into account when considering any public funding to a private sector organisation. Independent legal advice was secured in relation to the Free Wharf scheme and this confirmed that both the proposed flood defence and public realm works would not amount to state aid. The provision of the new roundabout for the A27 would also not amount to state aid as it would be a public benefit with the road being adopted after completion by Highways England.

6. Engagement and Communication

- 6.1 There has been publicity around the need for public funding for both schemes. Both planning applications included viability information to support the need for public funding. The Committee report for New Monks Farm also specifically referred to the public funding to be provided by the LEP.

7. Financial Implications

- 7.1 The Council will act as the accountable body for the grant responsible for:
- Claiming the funding from the Coast to Capital LEP and Homes England in accordance with the grant conditions;
 - Making payments to the developers;
 - Reporting to the grant awarding bodies progress in delivering the schemes.
- 7.2 Under the terms of the proposed agreements there are clawback arrangements should the grant conditions not be met. Whilst the Council is

not delivering the project, this financial risk sits with the Council as the accountable body. To mitigate against this, the Council will enter into a contractual arrangement requiring the developer to comply with the terms of the funding agreement and providing an indemnity to the Council in the event the Developer breaches any of the grant funding terms. No funding should be paid over to the Developer to carry out capital works until this agreement is in place.

- 7.3 The award of a grant for capital purposes is classed as capital expenditure consequently the Council will need to create a capital budget for the grants to be awarded.
- 7.4 These projects do not currently feature in the Council's capital programme and consequently the Committee needs to recommend to Council to approve these additions to the programme.

8. Legal Implications

- 8.1 Legal Implications s1 of the Localism Act 2011 empowers the Council to do anything an individual can do apart from that which is specifically prohibited by pre-existing legislation.
- 8.2 S1 Local Government (Contracts) Act 1997 confers power on the local authority to enter into a contract for the provision of making available of assets or services for the purposes of, or in connection with, the discharge of the function by the local authority.
- 8.3 Section 25 of 2003 Statutory Instrument No. 3146 - Local Authorities (Capital Finance and Accounting) regulations 2003 requires that 'the making of an advance or the giving of a grant or other financial assistance to any person, whether for use by that person or by a third party, towards expenditure, which would, if incurred by the authority, be capital expenditure shall be treated as capital expenditure.
- 8.4 The Council must ensure that the grant funding is spent (whether or not by the Council or the Developer) in a manner that is compliant with the Public Contract Regulations 2015 and the Council's Contract Standing Orders and spent in a manner that is not inconsistent with the rules on state aid pursuant to Article 107(1) of the Treaty on the Functioning of the European Union (formerly Article 87(1) of the EC Treaty).

- 8.5 The Council must at all times comply with the terms and conditions of the Grant Funding Agreement and ensure throughout the project that the project manager is familiar with those terms and conditions, carrying out the project obligations under the grant funding agreement to ensure compliance and to avoid potential claw back of any funding.

Background Papers

1. Planning application reports for New Monks Farm (AWDM/0961/17) and Free Wharf (AWDM/1497/17).
2. State Aid advice from Trower and Hamlins Solicitors

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Sustainability & Risk Assessment

1. Economic

- The grant funding will significantly benefit the local economy by helping to deliver viable new developments meeting the Districts future housing and employment needs. The development will provide significant new employment opportunities both during the construction stage and following occupation of the new retail and commercial floorspace. Both schemes represent a significant investment into the local economy.

2. Social

2.1 Social Value

- The development at New Monks Farm and Free Wharf will also significantly improve the social wellbeing of the District. The schemes will deliver affordable housing to help address the acute housing needs of the District as well as provide community facilities (school, community hub) and a large Country Park which will benefit new and existing residents.

2.2 Equality Issues

- Matter considered in connection with the Planning application.

2.3 Community Safety Issues (Section 17)

- Matter considered in connection with the Planning application.

2.4 Human Rights Issues

- Matter considered in connection with the Planning application.

3. Environmental

- The application at New Monks Farm was accompanied by an Environmental Impact Assessment (EIA) that assessed all the environmental, social and economic impacts of the development. These matters were also fully covered with the assessment of the Free Wharf scheme.

4. Governance

- As indicated in the report, there will be some resource implications for the Council in relation to over-seeing the projects and monitoring the payments to the relevant developers. This will be dealt with using existing staff resources. Any risks to the Council will be mitigated by entering into side agreements with the developers.