



Meeting: **Cabinet**

Date/Time: **Tuesday, 24 March 2020 at 2.00 pm**

Location: **Sparkenhoe Committee Room, County Hall, Glenfield**

Contact: **Anna Poole (Tel. 0116 305 2583)**

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Membership

Mr. N. J. Rushton CC (Chairman)

Mr. R. Blunt CC Mr. T. J. Pendleton CC
Mr. L. Breckon JP CC Mr. J. B. Rhodes CC
Mr. I. D. Ould OBE CC Mrs H. L. Richardson CC
Mr. B. L. Pain CC Mr. R. J. Shepherd CC

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SUPPLEMENTARY REPORT – MELTON MOWBRAY DISTRIBUTOR ROAD

<u>Item</u>	<u>Report by</u>	
8. Melton Mowbray Distributor Road.	Chief Executive, Director of Corporate Resources and Director of Environment and Transport	(Pages 3 - 16)



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CABINET – 24 MARCH 2020

MELTON MOWBRAY DISTRIBUTOR ROAD

**REPORT OF THE CHIEF EXECUTIVE, DIRECTOR OF CORPORATE
RESOURCES AND DIRECTOR OF ENVIRONMENT AND
TRANSPORT**

PART A

Purpose of the Report

1. The purpose of the report is to advise the Cabinet of officers' concerns that following the adoption of its Local Plan in October 2018, there is no evidence Melton Borough Council (MBC) has undertaken the level of work required on masterplanning which, given the financial risk to the County Council, would have provided assurance that the County Council could accept the grant aid offer from the Ministry of Housing, Communities and Local Government (MHCLG) and Homes England towards the cost of the southern section of the Melton Mowbray Distributor Road (MMDR).

Recommendations

2. (a) That the financial risk to the County Council of having to forward fund £100m on current estimates to allow the northern/eastern and southern sections of the Melton Mowbray Distributor Road to be constructed, be noted;
- (b) That it be noted that:
 - (i) this position has regrettably been exacerbated by Melton Borough Council having no comprehensive masterplan, including a phasing and delivery plan, for either the Northern or Southern Sustainable Neighbourhoods as required by the Melton Local Plan, including key transport links within and outside the developments, linking to the town of Melton Mowbray and other housing and employment areas;

- (ii) without these masterplans and a process to produce them not having been undertaken in line with the Local Plan, there is too much uncertainty about development in Melton for the County Council to commit to forward fund the cost of the southern section of the Melton Mowbray Distributor Road at a time of increasing financial uncertainty;
- (c) That Melton Borough Council and Homes England accordingly be advised that in the absence of masterplans which meet the requirements of the adopted Melton Local Plan and no assurance that Melton Borough Council is close to completing such plans after a required process of consultation with all stakeholders, the County Council is unable at this time to accept the grant aid offer from Government towards the cost of the southern section of the Melton Mowbray Distributor Road;
- (d) That the Department for Transport be advised that the County Council remains committed to progressing further the northern and eastern legs of the Distributor Road;
- (e) That an offer be made to Melton Borough Council for the County Council to undertake at its expense a fresh masterplanning exercise on the understanding that the Borough Council will cooperate fully and the outcomes of the exercise, to be concluded as quickly as possible, will be subject to the approval of both councils;
- (f) It is important to note in this context that the County Council has to date invested c.£5m in support of the Melton Mowbray Distributor Road and the Melton Mowbray Transport Strategy; has allocated £16m towards the construction of the northern and eastern legs of the Distributor Road; and is prepared to allocate £13m towards the construction of the southern leg if recommendation (e) is accepted by Melton Borough Council;
- (g) That the offer in (e) above be made to Melton Borough Council so that the County Council can accept the Housing Infrastructure Fund bid for the southern section of the Distributor Road; and that Melton Borough Council be informed of the County Council's intentions to give an answer to the Ministry of Housing, Communities and Local Government and Homes England on the grant aid offer for the southern section of the Distributor Road by 31st May 2020 at the latest.

Reason for Recommendations

3. Officers believe that the escalated financial risk to the County Council of accepting the Housing Infrastructure Fund (HIF) grant offer is not acceptable given the inadequate approach to masterplanning by MBC.

Timetable for Decisions (including Scrutiny)

4. Subject to the decision of the Cabinet, officers will respond to MHCLG and Homes England on the grant offer made by 31 May 2020.

Policy Framework and Previous Decisions

5. Following reports in 2015, 2018 and earlier in 2019, the Cabinet in November 2019 considered a joint report of the Director of Environment and Transport and the Director of Corporate Resources regarding a successful HIF bid of £15m for the southern section of the MMDR and ongoing discussions with MBC regarding a risk-sharing agreement to cover also the remaining funding of the road and related infrastructure. It was agreed to accept the HIF bid and that the Director of Corporate Resources and the Director of Law and Governance, following consultation with the Cabinet Lead Member for Resources, be authorised to finalise and enter into a risk-sharing agreement with MBC prior to the County Council signing the agreement with Homes England for the HIF funding (then expected to be in place by the end of this financial year).
6. A separate report is on this agenda in regard to the making of the Compulsory Purchase Order and Side Roads Order for land required for the northern and eastern sections of the MMDR. Construction of these sections of the MMDR following the successful approval of any required CPO is not affected by the recommendations of this report.

Resource Implications

7. The level of transport investment required to support growth across Melton is substantial. As an example, the County Council's commitment (and potential financial exposure) to deliver the scale of infrastructure required to support growth in Melton will require around £160m gross investment - broadly £100m for roads and £60m for schools, a cost which is now expected to rise. The County Council's burden is reduced due to the funding awarded from the Local Authority Majors Fund (£49m for the northern and eastern sections of the MMDR) and would be further reduced by the HIF bid (£15m for the southern section). Most of the remaining costs would have to be recouped in later years through developer contributions as part of the planning process. Therefore, it would require significant forward funding from the County Council leading to significant risks to the Authority.
8. Discussions with MBC had led to an outline approval for a risk-sharing arrangement which would be documented by a formal risk-sharing agreement. This would have seen an estimated £6m being contributed from MBC towards highway infrastructure over the period to 2035/36. Whilst the mechanics of how such an arrangement would work had been predominantly agreed, MBC required terms to be written into the agreement, which the County Council was not prepared to include (paragraph 24 et seq.).

9. A requirement of acceptance of the HIF bid is that equivalent contributions received from developers under the planning process will be recycled into facilitating other housing schemes in Leicestershire.
10. As part of the contracting process with Homes England, the County Council would also need to put in place appropriate monitoring arrangements to ensure that the reinvestment could be quantified and achieve its shared objective of unlocking further housing aligned with the Strategic Growth Plan for Leicester and Leicestershire (SGP).
11. The £13m match funding to make up the full £28m required to deliver the southern section of the MMDR was built into the updated capital programme/Medium Term Financial Strategy refresh. However, the process of initial facilitation work to meet the timescales to begin working on site in 2023 would need to commence early in the financial year 2020/21.

Legal Implications

12. The HIF Forward Funding Guidance published by the Government sets out that bidding local authorities are responsible for ensuring that any funding they are awarded will be spent in accordance with all applicable legal requirements, including planning law. Any development decisions for specific proposals must go through the normal planning process.
13. Additionally, any funding awarded has to be spent in accordance with state aid provisions, public procurement law requirements and general public law issues such as the Public Sector Equality Duty.
14. The Government's expectation is that the content of HIF bids should remain confidential. However, this does not remove the need for the Council to comply with Freedom of Information legislation and Environmental Information Regulations (FOIA/EIR). In that regard any requests under FOIA/EIR in respect to the scheme referred to in this report would be considered against, as necessary, the public interest factors for and against disclosure and applicable exemptions.
15. The Director of Law and Governance has been consulted on the content of this report.

Circulation under Local Issues Alert Procedures

16. This report has been circulated to members representing Melton electoral divisions: Mr J Orson, Mr A Pearson, Mrs P Posnett and Mr J B Rhodes.

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PART B

Background

17. Construction of the MMDR is a key element of a wider Melton Mowbray Transport Strategy (MMTS). The estimated infrastructure costs to build the whole of the MMDR (northern/eastern and southern sections) and provide appropriate schools are currently in the region of £160m, with an expectation they will rise. A Government grant of £49m has been awarded (subject to Full Business Case) towards the delivery costs of the northern and eastern sections, for which the County Council has already invested £4m.
18. Melton Mowbray is identified as a 'Key Centre for Regeneration and Growth' in the SGP. The adopted Melton Local Plan identifies that the required development for Melton be delivered within two new large scale sustainable neighbourhoods (SNs). These are described as the Melton South Sustainable Neighbourhood and the Melton North Sustainable Neighbourhood. Following consultation during 2016-2017, the Local Plan underwent Examination, and following the Inspector's Report was formally adopted in October 2018.
19. The successful HIF bid for the southern section of the MMDR included total costs estimated at £28m, of which £15m would be secured with £13m to be funded locally as match funding. This still leaves an estimated balance of c.£100m for the MMDR and related schools infrastructure to be secured through the planning decision-making process using Section 106 agreements, whereby the developer receiving planning permission from MBC makes a financial contribution to the County Council for the provision of the required infrastructure. As with all Section 106 agreements for major residential and other developments, as they are often built out in phases, contributions can take a number of years to be received. This gives a considerable financial risk to the County Council which has to be taken into account if the scheme in whole or in part is to progress.
20. If the HIF grant is not accepted, it would not remove the need to deliver new housing in Melton Mowbray; it would mean, however, that growth would take place at a slower pace and in a way much less likely to deliver the transport and other infrastructure required to support growth in a coordinated fashion. That applies to both the North and South SNs in relation to masterplanning, referred to in para. 30 et seq.

Funding

21. HIF funding would most likely require and include period payments (usually 6 monthly); delivery being on track (if not payments might be withheld); funding being spent only on capital costs; and there being an agreed delivery date for the scheme.
22. The working assumption has been that Government grants and Section 106 developer contributions would fill any funding gaps. However, as is normal with any development, Section 106 developer funding is not recouped until a

development approved by planning permission with a Section 106 agreement has reached certain stages of occupation. There is therefore a requirement for the County Council to forward fund the MMDR project, which puts the County Council at significant risk, given that securing and maximising the necessary level of Section 106 developer contributions is outside of its control, resting with MBC as the local planning authority. Furthermore, the grant of planning permission is very much dependent on MBC producing masterplans for both the North and South SNs. Without this, there is no way of ensuring consistency or quality in the way the development comes forward and there would be a risk that the right infrastructure would not be developed at the right time.

Risk Sharing and HIF Grant Conditions

23. Discussions with MBC had led to an offer of an estimated £6M being contributed from MBC towards highway infrastructure covering the whole MMDR over the period to 2035/36. This was prior to the HIF bid being announced as related discussions with MBC had been ongoing since early 2019 to try to reach an agreement about risk sharing. The cost to the County Council in officer time of those discussions and other contacts with MBC is substantial.
24. For some time MBC had been insisting on provisions in a risk-sharing agreement which were unacceptable to the County Council. Those included additional County Council financial support for regeneration initiatives in Melton Mowbray and taking forward the MMTS.
25. In the case of financial support for regeneration initiatives, the County Council has said repeatedly to MBC that it would consider an approach if it was backed up by a business case. No such approaches have been received. In any event it would almost certainly be unlawful for the County Council to fetter its discretion by contractually binding itself in an agreement to supporting a future business case before that business case has been adequately developed. The contractual commitment would effectively disable officers from exercising their administrative discretion to consider properly the merits of a business case when ultimately delivered.
26. The County Council would also want to see any business cases set in the context of one or more aligned masterplans. A masterplan can be defined as an overarching planning document and spatial layout which is used to structure land use and development and to inform design quality, infrastructure requirements and delivery rates. The Melton Local Plan requires a masterplan for the North SN and a masterplan for the South SN. For the town centre of Melton Mowbray and particularly to progress the MMTS, the County Council requires a clear understanding of a) MBC's intentions for the future development of the town centre, i.e. a 'town centre strategy', and b) MBC's proposals for manufacturing zones. Those have not been provided by MBC.
27. The masterplans need to be aligned and comprehensive in detail and scope. MBC has advised that masterplans are being developed by those developers who have interests in the North SN and by developers jointly with MBC for the

South SN. A draft for the South is said to have been produced. However, the County Council has not been formally engaged in discussions relating to either masterplan and has not had sight of any draft document. No timetable has been given for when these documents will be completed or when the County Council will be engaged in the process. As a developer in the North SN, the County Council has not been approached.

28. MBC have now agreed that any reference to regeneration initiatives or the MMTS could be in a side letter to any agreement. The County Council would require assurances about how MBC's own Local Plan obligations in relation to masterplanning and its planning intentions for the town will be fully met before such a letter could be drafted.
29. In regard to regeneration initiatives, in December 2014 the Cabinet authorised the sale of land at the former King Edward VII School, Melton Mowbray, to MBC. The site is now known as the Melton Sports Village and the County Council has invested c.£700,000 in improving facilities since the sale. A restrictive covenant was put in place to restrict the primary use of the site to sports and leisure purposes. A clawback clause was applied whereby any future uplift in value arising from a change of use would be shared between the two councils (75% to the County Council as vendor and 25% to MBC as purchaser). MBC has pressed for the County Council to release the covenant and change the clawback clause to allow MBC to sell (100% of the proceeds to MBC) and redevelop the site. MBC has also said that it is undertaking commercial appraisal of the site in regard to future use. At one stage MBC requested the release of the covenant to be a condition in any risk-sharing agreement for funding of the MMDR although that was withdrawn. It was made clear that the County Council would not agree and that remains the County Council's position.

The Importance of Masterplanning

30. The offer of HIF funding from the Government (MHCLG/Homes England) for the southern section of the MMDR requires the County Council as the bidder to meet a range of pre and post contract conditions. Inter alia, the County Council has to provide a detailed programme and strategy to secure planning permission for the housing applications as well as a procurement strategy for the delivery of housing and the road. In the absence of a comprehensive masterplan(s), the development of a strategy to secure planning permission is fraught with difficulty.
31. The adopted Melton Local Plan (policies SS4 and SS5) sets out the requirements for the delivery of the South and North SNs. This includes the requirement to prepare a masterplan, including a phasing and delivery plan. These should be agreed in advance of, or as part of, submission of a planning application for each SN. The masterplan should be prepared for the whole SN to which it relates and should set out the structure and concepts, including:
 - The amount and location of land uses, including delivery timetable

- Transport links within and outside the development, including between main housing areas, employment uses and the town centre
- Important environmental features, areas of greenspace and landscaping
- Design standards, including Building for Life and Active Design

The Local Plan requires that the masterplan be prepared in consultation with key stakeholders and that planning permission will not normally be granted until a comprehensive masterplan has been completed.

32. Policies relating to the two SNs were discussed at length at the Melton Local Plan examination. The Inspector was keen to ensure that the development and related infrastructure can be delivered and that the quality of development is appropriate. Full stakeholder engagement was seen as an essential component of delivery. The Inspector reached the conclusion that the Local Plan would only be found sound and be capable of adoption if main modifications were made. This included additional wording to recognise how crucial the SNs are to the Plan's delivery strategy and that there be a regular review, at least annually, of the agreed masterplans, with ongoing dialogue with delivery partners. To date, masterplans have not been produced and dialogue with the County Council as a stakeholder in respect of masterplanning has not happened.
33. The production of a comprehensive masterplan for each SN is an essential part of the success of delivering MBC's Local Plan. To ensure objectivity and alignment with MBC's aspirations, it is good practice for the local planning authority to take the lead on producing its masterplans, with appropriate collaboration with relevant public and private sector stakeholders. Allowing the developer to take the lead, which appears to be MBC's approach, can produce a framework that is biased towards commercial interests. This creates uncertainty about what will eventually be produced and whether the County Council's interests will be protected. This is especially pertinent given that MBC is suggesting that the masterplans will not be produced as Supplementary Planning Documents and therefore will not be subject to the level of collaboration that is necessary to ensure the documents are robust, as set out in planning legislation. This includes full public consultation and demonstrating how consultation responses have been taken into consideration.
34. The County Council has noted references on MBC's website to masterplanning for 'land south of Melton Mowbray', i.e. sketches, but does not regard them as masterplans. In contrast, masterplans are comprehensive and substantial documents.
35. MBC has recently advised the County Council that the main reason for the delay to the production of a masterplan for the south SN is that a 5 hectare site has not been found for a new secondary school. When the Local Plan was being prepared, it was envisaged that existing schools could be extended and this would accommodate the projected number of pupils. However, the increased number of homes now being proposed in the wider area has meant that it is no longer possible to extend existing schools sufficiently to satisfy demand without a new secondary school being built. The most appropriate and convenient location for a new school would be within the South SN development

land. The County Council has met with MBC and relevant developers in the South SN to identify a suitable site, but a solution is proving challenging. The County Council has a statutory obligation in respect of school place planning and, if a solution is not found, it would bring the risk of Government intervention.

36. The County Council strongly rejects any criticism from MBC that it did not inform MBC of the need for a new secondary school until 2019. MBC was first informed in 2016 and regularly thereafter.

Comments of the Director of Corporate Resources

37. The rate and scale of proposed new development in Leicestershire will have a major impact on the finances of the County Council. This is because of the need for the County Council to provide key infrastructure in the form of highways/transportation and schools. The development at Melton needs to be seen in this context with the total county-wide investment expected to be over £600m over the next 15 years.
38. This pressure on the capital programme coupled with on-going revenue pressure in part due to the Council's unenviable position as the lowest funded County Council in the Country is a major concern. The COVID-19 pandemic clearly makes a global economic downturn very likely and will also have a massive impact on the finances of the County Council. As the report demonstrates the County Council is dependent on MBC having an effective planning process to ensure that Section 106 income is maximised. The proposed risk sharing agreement main aim was to mitigate this risk. There are clear problems getting a risk sharing agreement that MBC find acceptable and in addition there are major planning risks which reduce confidence that all the required Section 106 monies will be received.
39. This risk applies to both the northern/eastern and the southern sections of the road. With the southern section the risk is more pronounced as a result of the HIF grant conditions and scale of infrastructure investment required. Members should be advised that given current risks, if they wanted to go ahead with this investment, it is likely that there will be implications for the ability of the County Council to make similar investment in other parts of Leicestershire. At this time it is not possible for the Section 151 officer to recommend going ahead with the HIF funded scheme. However, with investment in appropriate masterplanning, the situation can be rectified.

Conclusion

40. The importance of the MMDR to the development of the two SNs is recognised and the comments of the Director of Corporate Resources draw attention to the County Council's financial position and related risks in forward funding on current estimates £100m of expenditure, risks which are now increasing. However, in any event, it is recommended that the County Council cannot at this stage accept the HIF grant for the southern section due to the absence of masterplans which should have been prepared by MBC in accordance with its Local Plan. Without these, there is no agreed framework to provide the

assurance to the County Council that an appropriate form and quality of development can be secured, along with the delivery of essential infrastructure, at the right time.

41. On 6th March 2020, MBC sent to the County Council their 'latest briefing note with regards to the South Sustainable Neighbourhood Masterplan'. The County Council had not seen any earlier note. In the County Council's opinion, this note contains several inaccurate or misleading statements:

- consultants on masterplanning have not as stated 'worked collaboratively' with the County Council; they have not involved the County Council with the exception of some informal briefing meetings, which mostly covered the North SN and were not productive. There has been no formal engagement.
- the 'consultant's draft masterplan for the South SN' claimed to have been shown to a meeting in July 2019 was indicative and opposed by developers at the meeting.
- it is stated by MBC that 'developers in the north formed their own consortium and are now working on preparing a joint and collaborative plan' – the County Council is a landowner/developer in the north and has never been approached to join the consortium. It is understood that there are other landowners/developers who are not part of this arrangement.
- it is stated by MBC that 'in order to progress the masterplan and explore deliverability, Homes England were invited to support the (Melton) Council and the developers as an (sic) honest external mediators'. The County Council has been informed by Homes England that they made an offer to MBC to assist with the North SN but it was not pursued. No such offer was made for the South SN.
- the County Council is blamed for not facilitating the accommodation of a new secondary school in the masterplan for the southern neighbourhood, said to be 'the key and final issue outstanding in the preparation of an agreed masterplan'. This accusation is inaccurate and is dealt with earlier in the report. Despite every opportunity, MBC has not demonstrated that a document exists which could be turned into a comprehensive masterplan even if a school site were identified.

On 28 February the County Council was criticised by MBC for not submitting a local highway response to a planning application for 1500 homes in the South SN. The position is that holding back a response was agreed with the developer and MBC have not requested final observations.

42. The briefing note sent on 6 March confirms that MBC's approach to masterplanning in reality has been to leave it to developers to produce (their) ideas. The end product would be driven by commercial factors rather than effective place-making and sustainability principles. The County Council has no confidence in such an approach and therefore is offering to lead a fresh

approach to masterplanning on behalf of MBC, engaging fully with all relevant stakeholders as required by the Melton Local Plan. In the circumstances set out in this report and the risk to non-delivery of the southern section of the MMDR and the consequences for the implementation of the Melton Local Plan, it is recommended that the offer be formally made to MBC.

43. It should be noted that the County Council's commitment to the MMDR and therefore to the development of the Borough and the town of Melton Mowbray currently stands at a total of nearly £30m: £16m to take the northern and eastern sections to Full Business Case stage and to match fund the Government funding of £49m already secured by the County Council towards construction costs; £0.65m to develop the MMTS to its current stage; plus £0.25m to develop the southern section to its current stage. In addition, the County Council would have to make available £13m if the southern section went ahead. Also, the County Council, following its selling the Sports Village site to MBC, as a goodwill gesture has invested £700,000 in improving facilities on the site.

Equality and Human Rights Implications

44. The MMDR Southern section was identified in the Melton Local Plan as essential for the delivery of the planned growth in the district. The Plan itself was subject to an Equality and Human Rights Impact Assessment. Any future scheme will be subject to further assessment in line with the County Council's policy and procedures, more detailed assessments of specific proposals will be undertaken as they come forward through the planning process.

Environmental Implications

45. An environmental impacts study was carried out as part of the HIF bid development process to inform the WebTAG assessment. In accordance with relevant regulatory requirements, more detailed assessments of the specific proposals will be undertaken as they come forward through the planning process.

Background Papers

Report to the Cabinet – 22 November 2019 – Melton Mowbray Local Plan Delivery Partnership – HIF Bid Update

<http://politics.leics.gov.uk/ieListDocuments.aspx?CId=135&MId=5608&Ver=4>

Report to the County Council – 20 February 2019 - The County Council's Medium Term Financial

Strategy for 2019/20 to 2022/23

<http://politics.leics.gov.uk/ieListDocuments.aspx?CId=134&MId=5125&Ver=4>

Report to the Cabinet - 24 May 2019 - Supporting Growth in Leicestershire

<http://politics.leics.gov.uk/ieListDocuments.aspx?CId=135&MId=5603&Ver=4>

Report to the Cabinet - 18 December 2018 - Housing Infrastructure Fund

<http://politics.leics.gov.uk/ieListDocuments.aspx?CId=135&MId=5793&Ver=4>

Report to the Cabinet – 2 November 2018 – Leicester and Leicestershire Strategic Growth Plan 2018 – 2050

<http://politics.leics.gov.uk/ieListDocuments.aspx?CId=135&MId=5185&Ver=4>

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