

CABINET – 25 JUNE 2019

M1 JUNCTION 23 / A512 IMPROVEMENT

REPORT OF THE DIRECTOR OF ENVIRONMENT AND TRANSPORT AND THE DIRECTOR OF CORPORATE RESOURCES

PART A

Purpose of the Report

1. The purpose of this report is to advise members on the progress of the planned M1 Junction 23 (M1 J23) / A512 improvement scheme, a plan of which is appended to this report.
2. The scheme has reached the stage where detailed funding negotiations have been taking place with third parties, agreement to which is essential for the project to proceed. Whilst it is planned for work to begin on site in the summer, the report seeks the Cabinet's approval for the Director to suspend work on the scheme if necessary if third party contributions have not been formally secured.

Recommendations

3. It is recommended that
 - (a) The continuation of the necessary preparations to deliver the M1 J23 / A512 Improvement Scheme as identified in the Highways Capital Programme up to 30 June 2019 be approved, noting that this will involve negotiations to obtain the necessary legal agreements, secure third party contributions, and undertake public engagement;
 - (b) The approach to securing third party contributions as set out in paragraph 29 of this report and the risks associated with securing those contributions be noted;
 - (c) Should the necessary agreements not be in place by the 30 June 2019 the Director of Environment and Transport, following consultation with the Director of Corporate Resources and the Cabinet Lead Member for Environment and Transport, be authorised to suspend work on the M1 J23 / A512 Improvement Scheme pending a further report to the Cabinet in Autumn 2019.

Reason for Recommendations

4. Subject to funding, the County Council is committed to delivery of a comprehensive scheme at M1 J23 and the A512 that will:-
 - i. Bring together all interested parties to make best use of public and private sector resources;

- ii. Enable coordinated delivery of several planning requirements in one scheme;
 - iii. Reduce disruption on a critical part of Leicestershire's road network;
 - iv. Future proof the area in preparation for planned growth;
 - v. Unlock strategic employment and housing sites identified in Charnwood Borough Council's Core Strategy helping to support the delivery of planned growth, maintaining 5 year land supply and ensuring a reduction in speculative development; and,
 - vi. Ensure developments contribute fully to their share of costs.
5. Without agreement as to the third-party contributions and the mechanism for securing those contributions being in place further consideration will need to be given as to whether it is viable for the Council to pursue the scheme.
 6. By allowing a window for negotiations with developers and landowners to continue until the 30 June 2019 all reasonable opportunity will be provided for a successful conclusion. In order to meet the conditions of the grant funding which has been awarded for the scheme the contract needs to proceed to Stage 2 in early July 2019.
 7. Suspension of the scheme would provide an opportunity for the Council to consider its options including discussing potential to de-scope the scheme with the funding partners.

Timetable for Decisions (including Scrutiny)

8. Subject to reaching satisfactory conclusion to legal negotiations by 30 June, it is intended work will commence on-site from summer 2019, with completion during spring 2021.
9. If the scheme is suspended a further report will be submitted to the Cabinet and Environment and Transport Overview and Scrutiny Committee in the autumn.

Policy Framework and Previous Decisions

10. The Environment and Transport 2019/20 Highways Capital Programme and Highways Transportation Work Programme were approved by the Cabinet in March 2019. This included the M1 J23/A512 scheme and procedures for procurement of major schemes.

Resource Implications

11. The total cost of the scheme is estimated to be approximately £25 million. Total costs to date are £1.6 million.
12. £17m grant funding has been secured towards the costs of the scheme - £12 million from the Local Growth Fund (via the LLEP) and £5 million from the Growth and Housing Fund (Highways England). The remainder of the scheme costs will be forward funded by the County Council ahead of contributions from developers (currently estimated at approximately £8m).
13. It was originally expected that all land would be in the control of the relevant developers when delivery of the scheme commenced on the ground. As this

is not the case the Council is seeking to enter into agreements with developers and landowners, using both cash repayments and land value to secure contributions.

14. As the scheme will benefit the proposed development in the area, the Council will ultimately seek to recover its net £8m outlay from the developers.

Legal Implications

15. The Council is seeking to protect its interest by entering into legal agreements with the landowners and developers. Negotiations have been pursued in the hope of putting in place suitable security to safeguard against the risk of non-compliance.
16. Negotiations have been complex, with competition interest of the County Council, developers and landowners all requiring different considerations within the agreements. In light of this the Council is seeking to protect its interests through suitable legal mechanisms. The current proposals would mean that there would remain a residual risk that should any of the relevant parties fall in to financial difficulties the Council may not be able to recover its interest.
17. It is proposed to accept this risk on the basis of the strong credit rating of all parties and the overall position that planning permission has been granted for the northern site and is being progressed for the southern site, indicating that the likelihood of the risk arising is minimal.
18. Although a restriction is not the most robust mechanism available, it is considered proportionate when looking at the wider issues for the County Council. The scheme is intended to support housing and economic development, avoid repeated disruption for residents and maximise public and private sector funding.
19. The Director of Corporate Resources and the Director of Law and Governance are supporting the ongoing negotiations and have been consulted on this report.

Circulation under the Local Issues Alert Procedure

Mrs C. M. Radford CC, Mr. J. Morgan CC, and Mr. Max Hunt CC.

Officers to Contact

Ann Carruthers
Director, Environment and Transport
Tel: (0116) 305 7000
Email: Ann.Carruthers@leics.gov.uk

Ian Vears
Assistant Director, Environment and Transport
Tel: (0116) 305 7215
Email: Ian.Vears@leics.gov.uk

PART B

Background

20. In 2014, an outline planning application was made to Charnwood Borough Council by William Davis Ltd and Persimmon Homes (North Midlands) in relation to a 466-hectare site on the western edge of Loughborough, known as the “West of Loughborough Sustainable Urban Extension (SUE)”. The proposed development included 3000 homes, 16 acres of employment land, schools, and a new road link from the A512 to the A6. Outline planning permission was granted in July 2018.
21. The M1 motorway lies immediately to the west of the application site, with the southern edge of the site defined by the Ashby Road (A512) corridor. A detailed assessment of the effects of the proposed development in terms of transport and movement was provided by the applicants and a number of capacity improvements identified to mitigate the impact of the development.
22. The adopted Charnwood Local Plan 2011 - 2028 Core Strategy (2015) states that “our evidence also suggests that improvements will be needed at Junction 23 of the M1 motorway and that the A512 will need to be dualled, at least to the west of Snell’s Nook Lane. This will help to improve the relationship between existing housing and employment areas as well as mitigating against [sic] traffic movements resulting from the developments”.
23. Highways evidence developed in line with Charnwood Borough Council’s Core Strategy and planning decisions shows that the cumulative impact of developments in Loughborough on M1 J23 requires improvements at both M1 J23 itself and along the A512 between Tickow Lane, Shepshed and Snells Nook Lane. Without these improvements on the local highway network, the M1 around J23 will become heavily congested, which will obviously affect the traffic flow on the M1. The planned scheme would address the issue of traffic blocking back into the M1 J23 circulatory carriageway, which would otherwise prevent vehicles from exiting the motorway northbound off-slip. An improved M1 J23 will also complement the works at M1 J24 which are being delivered as part of the nationally significant Roxhill Strategic Rail Freight Interchange.
24. The County Council’s ‘Prospectus for Growth’ (February 2019) details the scheme as upgrading single carriageway to dual carriageway and remodelling five junctions on the A512. It aims to support sustainable housing and employment growth, manage congestion, maintain or improve journey times, improve accessibility, safety and issues of vehicles queuing on the M1 northbound off-slip.
25. In addition to the West of Loughborough SUE, wider growth of around 1,200 new homes is dependent on the delivery of the improvements at M1 J23. This growth is spread across smaller sites in Shepshed and the scheme provides the opportunity to bring several smaller projects into one large scheme, minimising disruption for road users.

26. Given the considerable benefits of the proposals and potential for added value that a Local Authority-led scheme could offer in the context of multiple stakeholders, various planning conditions and the need for a major scheme on strategically important road network, the County Council began securing external grant and developer funding to support the delivery of the scheme in 2016.
27. The scheme is estimated to cost a total of £25m and as such significant site investigation and subsequent design work has taken place over the last three years. Over this period the County Council has also been liaising with funding partners, contractors, and Charnwood Borough Council to obtain 'in principle' agreement to the contributions.
28. The County Council has been working with developers and landowners of development sites adjacent to the A512 to help enable all parties to achieve their objectives. As the timetable for the M1 J23 / A512 Improvement Scheme and the developers' programmes are not aligned exactly, the Council's approach (as detailed in the Legal Implications section above) is to allow the payment of developer contributions to be deferred by using land as security, as well as an agreement under section 278 of the Highways Act 1980. The deferral involves a contractual agreement for the payment of the third parties' contributions at agreed trigger dates (in the event of default litigation proceedings would have to be issued to enforce the provisions). In this way the scheme can be delivered within the constraints of the grant funding.

Current Position

29. Earlier this year work reached a stage that enabled the detailed contribution negotiation to take place. This is still ongoing but as significant progress has been made to date, including agreed heads of terms (subject to signing), it is expected that formal agreements can be reached within the deadline for delivery.
30. The Highways and Transport Capital Programme is £159.2m and while the Council would be able to forward-fund the developer contributions, it is not in a position to absorb these costs. It is therefore essential that an agreement regarding contributions is in place with the developers.
31. Legal teams from all parties have prepared appropriate agreements to enable the County Council to secure payment of the necessary contributions to deliver the scheme.
32. Discussions continue over an appropriate legal mechanism to protect the County Council's interest. The current proposal would take the form of the registration at Land Registry of a restriction which would not protect the County Council in the event of liquidation or insolvency, but would provide some measure of security as it would encumber the landowner's title and would bind successors in title. This is proposed as a result of emerging constraints identified by developers and land owners over the course of negotiations. A restriction would not provide the County Council with secured creditor status.

33. Without the formal agreements in place and some form of security provided by the landowners and developers, the Council would be exposed to the risk of the developer contributions (estimated at £8m) at the point of proceeding to Stage 2 of the delivery contract which it would struggle to recover. Moreover, there would be little or no incentive for developers to negotiate with the Council were it to undertake that liability.

Early Contractor Involvement

34. The County Council is a member of the Midlands Highways Alliance and, as part of the Council's procurement strategy, uses the Medium Schemes Framework (MSF3) to procure the appropriate contracts to deliver many of the Environment and Transport Department's capital programme schemes. The MSF3 uses the New Engineering Contract 4 (NEC4), which provides the opportunity to enter into a contract with the highways construction industry at an earlier stage.
35. In order to maximise the opportunity to obtain cost certainty and manage risk, the Council has been engaged in early contractor involvement with the appointed contractor, Morgan Sindall, on this scheme, since January 2019. The necessary budget, risk and programme information is now in place to proceed to Stage 2 of the contract, the delivery phase, subject to funding being in place.
36. If the necessary agreements cannot be reached to secure third party funding to support the delivery of the scheme alternatives would be explored by the Council before withdrawing from the delivery of the scheme, including -
- Delivering a de-scoped scheme - removing elements that specifically benefit developers from the scope of the scheme. This is not however a simple exercise as the best design is dependent on third party land in addition to third party funding.
 - Allowing developers to deliver the elements relevant to their obligations on a piecemeal basis. This approach would lose the benefits of the scheme outlined in paragraph 4.
 - Exploring possible funding alternatives.

Equality and Human Rights Implications

37. The Equality and Human Rights Impact Assessment screening has not identified any specific issues arising from this matter. This will be continually monitored as the scheme progresses and throughout delivery.

Environmental Implications

38. Environmental implications of the scheme have been assessed and addressed through the relevant planning and design processes.

Partnership Working and Associated Issues

39. The Council, along with several partners is working collaboratively to deliver upfront highways infrastructure required to support growth. A successful conclusion to negotiations between all parties will provide formal and legally binding agreements to contribute to the delivery of this major scheme.
40. This project has involved seeking to align the timescales, cashflow restrictions and numerous interests across the key contributors. This has given rise to challenges in reaching a binding agreement within the timeframes set out.

Risk Assessment

41. If the M1 J23/A512 Improvement Scheme does not proceed there will be significant adverse implications for route performance/reliability, the ability of the local highways network to support economic growth, and for the developers' ability to discharge their planning conditions and hence deliver their developments.
42. An assessment has identified a range of potential risks which could affect the Council's forward-funding repayments, including:-
 - i. No agreement being reached leading to significant delays or withdrawal of grant funding;
 - ii. Housing and employment markets experiencing a severe downturn and no development taking place for a significant period of time; and,
 - iii. Unforeseen risks emerging during the delivery of the scheme causing cost or programme overruns.
43. The will be managed through the project risk assessment throughout the life of the project.

Background Papers

Report to the Cabinet on 29 March 2019 - Environment and Transport 2019/20 Highways Capital Programme and Highways Transportation Work Programme
<http://politics.leics.gov.uk/ieListDocuments.aspx?CId=135&MId=5601&Ver=4>

Leicestershire County Council Prospectus for Growth - February 2019
<https://bit.ly/2XJWf4w>

Report to the County Council on 20 February 2019 - Medium Term Financial Strategy 2019/20 -2022/23
<http://politics.leics.gov.uk/ieListDocuments.aspx?CId=134&MId=5125&Ver=4>

The Leicester and Leicestershire Strategic Growth Plan: Consideration of Revised Plan for Plan – approved by the Cabinet on 23 November 2018
<http://politics.leics.gov.uk/ieListDocuments.aspx?CId=135&MId=5185&Ver=4>

Charnwood Borough Council – The Adopted Charnwood Local Plan 2011 to 2028 Core Strategy (2015) <https://bit.ly/2XeiyIS>

Appendix

Indicative Scheme Drawing for the M1 Junction 23 / A512 Improvement Scheme