



CABINET – 23 JUNE 2020

MELTON MOWBRAY DISTRIBUTOR ROAD

**SUPPLEMENTARY REPORT OF THE CHIEF EXECUTIVE,
DIRECTOR OF CORPORATE RESOURCES AND DIRECTOR OF
LAW AND GOVERNANCE**

PART A

Purpose of the Report

1. The purpose of this report is to advise the Cabinet of a decision of Melton Borough Council on 17th June 2020 to approve a masterplan for its South Sustainable Neighbourhood area; that the decision of the Borough Council appears not to have taken into account the County Council's position in regard to the financial viability of the South Sustainable Neighbourhood; and that as a consequence officers cannot recommend to the Cabinet that the grant offer from the Ministry of Housing, Communities and Local Government and Homes England towards the cost of construction of the southern section of the Melton Mowbray Distributor Road (MMDR) be accepted.

Recommendations

2. It is recommended
 - (a) That the position of the County Council in respect of the masterplan for the South Sustainable Neighbourhood and the financial viability of the Neighbourhood as approved under delegated powers by the Chief Executive following consultation with the Leader and the Deputy Leader, and communicated to Melton Borough Council prior to its Cabinet meeting, be noted;
 - (b) That the decision of the Cabinet of Melton Borough Council at its meeting on 17th June 2020, inter alia, to approve the masterplan, be noted;
 - (c) That the views of the Director of Law and Governance (set out in paragraphs 17 to 23 of this report) on the decision of Melton Borough Council's Cabinet of 17th June be noted;
 - (d) That the County Council's position as set out in (a) above, viz:

“To date no evidence has been provided by Melton Borough Council in the masterplan or elsewhere to demonstrate the financial viability of the South Sustainable Neighbourhood in its proposed form and for which no timescales are given for the different phases of development. Consequently, the County Council is still not in a position to accept the Housing Infrastructure Fund grant-aid offer towards the cost of the southern leg of the MMDR.”

be reaffirmed and that Melton Borough Council be also advised (i) of the views of the Director of Law and Governance and (ii) that the County Council notes that it has had no answer from Melton Borough Council as to exactly on what basis it believes the South Sustainable Neighbourhood development to be viable;

- (e) That Homes England be advised of the County Council's position accordingly.

Reason for Recommendations

- 3. Officers believe that the increasing financial risk to the County Council is not acceptable without the assurances and information sought from Melton Borough Council.

Timetable for Decisions (including Scrutiny)

- 4. Any decision on keeping the Housing Infrastructure Fund (HIF) grant offer open is a matter for Homes England.

Policy Framework and Previous Decisions

- 5. Following reports in 2015, 2018 and earlier in 2019, the Cabinet in November 2019 was informed of a successful HIF bid for £15m for the southern section of the Melton Mowbray Distributor Road (MMDR). Following ongoing discussions with Melton Borough Council, the Cabinet on 24th March 2020 resolved as follows:
 - (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) That 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.

Resource Implications

- 6. 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 was expected to rise at the time of the Cabinet meeting in March 2020 and is now expected to rise further post Covid-19. The County Council has been awarded funding from the Local Authority Majors Fund, subject to a full business case (£49m for the northern and eastern sections of the MMDR) and the Homes England/HIF grant aid offer (£15m for the southern section) which together would reduce the financial exposure of the County Council to £100m on previous estimates but now expected to rise. These 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.

Legal Implications

7. The comments of the Director of Law and Governance are contained in paragraphs 17 to 23.

Circulation under Local Issues Alert Procedures

8. 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.

Officers to Contact

John Sinnott
Chief Executive
Tel: (0116) 305 6000
Email: john.sinnott@leics.gov.uk

Chris Tambini
Director of Corporate Resources
Tel: (0116) 305 6199
Email: chris.tambini@leics.gov.uk

Lauren Haslam
Director of Law and Governance
Tel: (0116) 305 6240
Email: lauren.haslam@leics.gov.uk

PART B

Background

9. Melton Mowbray is identified as a 'Key Centre for Regeneration and Growth' in the Leicester and Leicestershire Strategic Growth Plan. The adopted Melton Local Plan identifies that the required development for Melton be delivered within two new large scale sustainable neighbourhoods. 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. The MMDR is seen as facilitating the development of both neighbourhoods.
10. The HIF bid for the southern section of the MMDR included total costs estimated then at £28m, of which £15m would be secured through a HIF grant with conditions regarding recoupment, leaving £13m to be funded locally as match funding. That left, in the event of a successful bid, an estimated balance at the time of c.£100m for the MMDR, including the local contribution to the Northern and Eastern section of the road and related schools infrastructure. This would need to be secured through the planning decision-making process using Section 106 agreements, whereby the developer receiving planning permission from Melton Borough Council (MBC) makes a financial contribution to the County Council for the provision of the required infrastructure provided MBC agree the contribution is CIL (Community Infrastructure Levy) compliant. 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.
11. If the HIF grant were 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 Sustainable Neighbourhoods and the town centre.

Masterplanning and Assurance to the County Council

12. The Cabinet decision on 24th March 2020 recognised the importance of masterplanning to provide assurances to the County Council in respect of the viability of the South Sustainable Neighbourhood and the ability of the County Council to reclaim its required forward funding from developers. Given the previous approach adopted by MBC, the County Council offered (recommendation (e), paragraph 5) to undertake at its expense a fresh masterplanning exercise. That offer was immediately rejected by MBC and later, at its Cabinet on 22nd April, it was decided that MBC would produce a masterplan using existing consultancy support.

13. The County Council was notified and asked to provide certain information, which was done. Two drafts of a masterplan were sent to the County Council on 20th May and 5th June. Although little time was given to comment, a long list of comments was sent in response to the first draft, some of which were recognised in the second draft. In response to the second draft it was pointed out in particular that the document did not provide the assurance on financial viability which the County Council was seeking.
14. A third or final draft masterplan was published on 12th June with the papers for MBC's Cabinet meeting on 17th June. In response the Chief Executive wrote to MBC setting out the County Council's position; in the time available delegated powers were used in consultation with the Leader and the Deputy Leader. A copy of the Chief Executive's letter is enclosed as Appendix A. The letter was not referred to during MBC's Cabinet meeting.
15. MBC's website shows the decision of its Cabinet on 17th June:
- “(1) APPROVED the Masterplan for the purposes of providing a framework to guide the consideration of future planning applications in the South Sustainable Neighbourhood area;
- (2) NOTED that its adoption would support the delivery of the southern section of the Melton Mowbray Distributor Road;
- (3) INSTRUCTED that it be presented to Leicestershire County Council (LCC) with correspondence explaining that it was the view of the Council that the Masterplan was a robust and credible document to guide the development of the South Sustainable Neighbourhood and as such, provided the assurances sought in order to enable LCC to accept the HIF award;
- (4) DELEGATED authority to the Director for Growth and Regeneration to make minor adjustments and corrections to the content of the Masterplan document.”

There is no indication that the County Council's position on the financial viability of the South Sustainable Neighbourhood was taken into account by MBC's Cabinet in coming to its decision.

16. Subsequently on Friday, 19th June, the Chief Executive of MBC sent the letter enclosed as Appendix B. It is referred to in the comments below by the Director of Law and Governance and the Director of Corporate Resources. Enclosed with that letter is what is referred to as an 'independent review' undertaken by an officer of Blaby District Council. That review does not take account of the County Council's concerns and says nothing on viability, nor on weaknesses around sustainability, nor on timescales for delivery, nor on consultation or public engagement. At best it is a high level review.

Comments of the Director of Law and Governance

17. It is clear that the County Council has an interest in the masterplan approval process and therefore is a relevant consultee with a legitimate expectation that the consultation undertaken will be adequate and fair. There is a significant and well established¹ body of law concerning consultation that establishes:
- a. Consultation must be made at a time when proposals are at a formative stage.
 - b. Sufficient reasons for the proposal must be given to allow intelligent consideration and response.
 - c. Adequate time must be given for a response.
 - d. The product of the consultation must be conscientiously taken into account in finalising proposals.
18. A further key aspect of the law regarding the making of rational and evidence-based decision is a requirement that the decision-maker has taken all relevant factors or considerations into account². This does not mean that a decision-maker must consider all material, but it should have as much information as possible, that is relevant to the decision that it is about to make and this is likely to include responses to consultation and/or written representations received.
19. Melton BC did make explicit reference to the County Council's position in its report but failed to accurately represent the concerns of the County Council as expressed in the March Cabinet report or in the representations and questions raised by the Chief Executive. The absence of any indication that the Council's feedback and representations have been taken into account in the decision-making process may be seen to be a "material and important deficiency" such as to affect the lawfulness of the consultation process³.
20. An analysis of the report shows:

Melton BC (MBC) Cabinet report	County Council (LCC) Comment
Delivery of a Masterplan would meet the requirements of LCC to accept the HIF to support the earlier delivery of the southern section of the Melton Mowbray Distributor Road.	This is not accurate and does not address the questions raised by LCC about the financial viability of the development.
The Masterplan is considered to have developed into a strong, positive and coherent approach to the development of the Sustainable Neighbourhood. It is considered to	No assurances have been given to address LCC's concerns and the Masterplan itself does not provide this assurance.

¹ [R v Brent London Borough Council, ex parte Gunning \(1985\) 84 LGR 168.](#)

² [Anisimic v Foreign Compensation Commission \[1969\] AC 147](#) (confirmed in [Lumba v Secretary of State for the Home Department \[2012\] 1AC 245.](#)

³ [R \(Morris\) v Newport City Council \[2009\] EWHC 3051 \(Admin\)](#)

<p>provide the assurance requested by LCC to ensure delivery of housing and infrastructure and particularly recovery of infrastructure investment ('forward funding') and as such forms a sound basis for them to accept the Housing Infrastructure Fund award.</p>	
<p>A revised consultation version, incorporating the most significant of the amendments, was circulated for comment and discussion on 5th June 2020. At the time of writing no further comments have been received from LCC in relation to this version.</p>	<p>The letter from the Chief Executive was sent on 15th June; it may have been reasonable to have expected that the Cabinet meeting only two days later would have been advised of the content of this letter. As it stands it seems that this important information was not brought to the attention of the MBC Cabinet and was not therefore taken into account when reaching a decision to approve the Masterplan.</p>
<p>Comments have been made by LCC and the developers and the Masterplan has evolved to accommodate these so far as considered necessary and possible.</p>	<p>It is unclear to LCC how and in what respect the comments it has made have been accommodated in the Masterplan nor has there been reasonable opportunity to allow for verification.</p> <p>Parts of the Masterplan have been amended since the version published with the MBC Cabinet report and it is understood from the letter of 19th June that MBC officers have been granted delegated authority to make further adjustments. It is not clear how these may impact on LCC and the infrastructure requirements.</p>
<p>The masterplan is a robust and credible documentand as such provides the assurances sought in order to enable LCC to accept the HIF award.</p>	<p>As above, LCC does not consider that any assurance is provided by the Masterplan as approved in the absence of detailed responses to the questions that have been raised.</p>
<p>The Masterplan takes account and provides the assurances requested by LCC.</p>	<p>As above.</p>

21. Case law is also clear that failures in the overall consultation process may render the decision taken as unlawful so that it has to be retaken properly. The usual process where there has been a failure to follow the correct process and to properly consult will be a challenge by way of Judicial Review.

22. The concern for the County Council about the potentially significant impact on its finances in order to support development in Melton, not just the southern leg of the MMDR, remains.
23. Reviewing the letter dated 19th June received from the Chief Executive of MBC, there are a number of points raised to which the County Council could respond in terms of accuracy. The main points to note, as referred to elsewhere in this report, are in respect of viability, which the County Council challenges.

Comments of the Director of Corporate Resources

24. As stated above, the extent to which these developer contributions will be received is highly dependent on the overall viability of the developments and as such exposes the County Council to significant financial risks.
25. The County Council has already committed to funding the residual costs of the Northern and Eastern sections of the MMDR after allowing for the Local Authority Majors Fund money. This in itself is a commitment to a level of forward funding and associated risk on a scale much bigger than the Council has previously committed to.
26. These risks are now likely to be increased due to the expected cost increases of delivering the scheme given the additional measures and considerations that will need to be put in place to ensure social distancing is maintained through the construction period. And this is compounded further by the fact that the Covid-19 pandemic means that the County Council, like all local authorities, will be faced with significant additional costs coupled with reductions in future core funding and other income levels.
27. Within the joint viability assessment undertaken by Cushman and Wakefield last July, the estimated net infrastructure costs for the Northern Sustainable Neighbourhood were showing as £36.9m which, based on the expected 1,700 homes works out at £21,700 per house.
28. The estimated net infrastructure costs for the Southern Sustainable Neighbourhood were £63.1m which based on the estimated 2,000 houses works out at £31,600 per house.
29. The viability study, being more than a year old, was undertaken against the background of more certain market conditions than exist today. Accordingly, in assessing the need for external funding and the wider risks to deliverability, a sensitivity analysis, examining the potential changes to Gross Development Value and construction costs should be undertaken to provide a greater understanding of overall risk.
30. It is contended that without an updated viability assessment, it is not possible to be confident that the scheme is viable under current market conditions, even with the benefit of external funding.

31. This, taken with the significantly increased pressures on the County Council's financial position, and the expectation of costs of delivery increasing further, outlines why the County Council is concerned about committing to forward funding the Southern Sustainable Neighbourhood in the current climate, on top of the commitment already made in relation to the Northern/Eastern section.

Conclusion

32. In spite of MBC producing a masterplan, it is devoid of detail on timetable for the development of the South Sustainable Neighbourhood, of any evidence that the South Sustainable Neighbourhood is financially viable, and of any assurance to the County Council that it could recover the substantial costs (around £50m) which would have to be met from developer contributions. In particular since MBC is either unwilling or unable to answer the direct question as to exactly on what basis it believes the South Sustainable Neighbourhood development to be viable, the situation now is therefore effectively unchanged from that reported to the Cabinet on 24th March.

Equalities and Human Rights Implications

33. 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, and more detailed assessments of specific proposals will be undertaken as they come forward through the planning process.

Environmental Implications

34. 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 specific proposals would be undertaken through the planning process.

Appendices

Appendix A - Letter from the Chief Executive of Leicestershire County Council to the Chief Executive of Melton Borough Council dated 15th June 2020

Appendix B - Letter from the Chief Executive of MBC to the Chief Executive of Leicestershire County Council dated 19th June 2020 and 'review' of the masterplan

Background Papers

Report to the Cabinet on 22 November 2019: Melton Mowbray Local Plan Delivery Partnership - HIF Bid Update - <https://bit.ly/3fc69UP>

Report to the Cabinet on 24 March 2020: Melton Mowbray Distributor Road - <https://bit.ly/2zogPjT>

Report to Melton Borough Council Cabinet on 17 June 2020 and decisions of that meeting - <https://bit.ly/3dkoq0U>

This page is intentionally left blank