

East Herts Council Report

Executive

Date of meeting: 23 November 2021

Report by: Councillor Linda Haysey – Leader of the Council

Report title: Harlow and Gilston Garden Town (HGGT) – Rolling Infrastructure Fund Memorandum of Understanding – for agreement

Ward(s) affected: Hunsdon and Sawbridgeworth

Summary

- This report recommends that the HGGT Rolling Infrastructure Fund Memorandum of Understanding (RIF MoU) can be agreed. The MoU represents a high level agreement amongst the Garden Town partners in relation to how funds secured from the repayment of Housing Investment Grant (HIG) will be managed and how decision about their future use will be made. There is a requirement for the GT partners to establish these initial arrangements in relation to the reuse of the government HIG grant as one of the conditions of the grant funding.

RECOMMENDATIONS FOR EXECUTIVE:

- A. To agree the Memorandum of Understanding relating to The Harlow and Gilston Garden Town Rolling Infrastructure Fund (attached as **Appendix 1** to the report) and to agree its submission to Homes England by the end of November 2021 as required of the Harlow and Gilston Garden Town Authority partners and specifically Hertfordshire County Council (as

accountable body for the Housing Investment Grant funding to which the Memorandum of Understanding relates).

- B. To agree to the set up and operation the Rolling Infrastructure Fund 'in principle' subject to more detailed work and approval of the appropriate governance and operational arrangements for its management.
- C. To agree that the Rolling Infrastructure Fund is governed initially in accordance with the approved Memorandum of Understanding as required by Homes England as a condition of the Housing Investment Grant funding and subsequently in accordance with any further governance arrangements that may be put in place following further agreement between the HGGT partners.
- D. To agree that the Head of Planning and Building Control, in consultation with the Leader of the Council, be authorised to agree any further non-material amendments.

1.0 Introduction

- 1.1 The HGGT partnership submitted a bid in 2019, led by Hertfordshire County Council (HCC), for government funding under the Housing Investment Fund to "forward-fund" the transport infrastructure works in the Stort Valley to support growth at Gilston and the wider Garden Town and to deliver the North to Centre Sustainable Transport Corridor (STC) linking the Gilston Area with Harlow town centre. The Stort Valley Crossings and STC are essential infrastructure necessary to unlock the planned housing and economic growth in accordance with allocations in the Local Plans of the relevant partner councils, and to support the planning proposals in the Gilston Area. The Stort Valley Crossings and the STC will be crucial to the achievement of the modal shift objectives set out in the HGGT Vision and Transport Strategy

for active and sustainable modes of transport like, walking, cycling and public transport. The bid was successful and funds have been allocated under the Housing Investment Grant (HIG) programme.

- 1.2 As a key part of the bid, it was proposed that the initial government money for the infrastructure would forward fund the works ahead of when they would have been built under the traditional developer obligations / contributions route secured through Section 106 Agreements. Under the latter method the developer would be under contractual obligation to provide the infrastructure by the time an agreed number of housing units are completed. By securing the HIG funding, the time difference for delivery between these two approaches has been estimated at 2-3 years. By the HIG funded route the aim is to ensure that the Crossings and STC are in place in time to influence new resident travel choices. The HIG funding has to be spent within a specified availability period, before April 2025.
- 1.3 As indicated, the bid has been successful, and in March 2020 HM Government awarded £171.18 million in HIG to HCC. The requirement to ensure a Rolling Infrastructure Fund (RIF) was enshrined in the terms and conditions related to the award, which also required a Recovery & Recycling Strategy (RRS) as a condition of the HIG funding. The RRS demonstrates to Homes England how the HIG funding will be recovered from developers such as those promoting the housing schemes for the Gilston Area and the Stort Valley Crossings infrastructure, in the form of developer contributions under Section 106 Agreements, how these contributions will be brought into the RIF, and how the RIF will be recycled into other qualifying projects.
- 1.4 The RRS establishes the concept that the recycling will be achieved by the effective operation of RIF. The Recovery

element of the RRS is based on a payment schedule of section 106 contributions which will be concluded between the Local Planning Authority (LPA) and developers as part of the Section 106 Agreement related to the Gilston Area outline housing applications and similarly for other strategic sites in the Garden Town. The RRS when completed and agreed will be submitted by HCC (as the accountable body for the HIG) to Homes England to satisfy the HIG funding conditions. HM Government indicated through Homes England that if a satisfactory RRS was implemented, the HIG money would not need to be repaid back to Homes England and therefore it has the potential to be continually recycled for appropriate HGGT infrastructure subject to relevant considerations.

- 1.5 Beyond the Gilston Area housing applications, the RIF will continue to receive the future Section 106 contributions from the other strategic sites such as East of Harlow, Latton Priory and Water Lane. The contributions will be collected by the relevant LPA in the first instance and would subsequently flow through all five partners. It is critical that all HGGT partners maximise the collection of these contributions and are supported by consistent policy and evidence across HGGT via the HGGT Infrastructure Delivery Plan and Section 106 Contributions Policy or other policy mechanisms.
- 1.6 Homes England will require evidence that there is a clear consensus between the HGGT Authority partners as to how the RIF will be set up, managed and governed. Homes England have been supplied with an advanced draft of the RIF MoU and their comments have been considered in the final version.
- 1.7 Decisions about funding the delivery of vital infrastructure for the Garden Town from the RIF are strategic matters which would influence the potential to deliver the growth planned for the Garden Town. Therefore, individual and incremental decisions by any one or more of the partner authorities

without effective strategic oversight and management of the RIF could present risks to delivering the HGGT Vision, planned growth, infrastructure and modal shift objectives. This is why the RIF needs a clear collective decision making governance structure, endorsed by the HGGT Authority partners, to ensure strategic, transparent and equitable allocation of RIF funds towards suitable projects. An early estimate of the value of contributions that form the RIF is approximately up to £270 million.

- 1.8 The RIF is therefore a powerful tool and potential source of infrastructure funding to help the HGGT Authority partners to fulfil the HGGT Vision and bring about transformational change to the whole Garden Town area. If the infrastructure spend is controlled and if sufficient developer contributions and tariffs can be collected as envisaged by the Infrastructure Delivery Plan and relevant policy to secure future streams of funding, the RIF could “roll” a number of times. The future sources of infrastructure funding into the RIF will be dictated by the relevant policy context and would benefit from clear evidence base and policy requirements for identified infrastructure.
- 1.9 There is a high likelihood that there will be insufficient funds in the RIF at the point when it is needed to forward fund future projects. Innovative finance options will need to be considered as soon as possible including the potential to borrow in advance of the developer contributions reaching the RIF. It is essential that RIF governance progresses at pace to provide those options to partners.
- 1.10 The HIG award necessitated a governance and consensus seeking process for the establishment of the RIF and a Memorandum of Understanding was agreed as the appropriate mechanism. Following the initial drafting of the MoU, legal and finance colleagues across the partnership have

provided input to subsequent versions. The level of engagement has been high and many of the comments concern the detailed arrangements that will be dealt with in the next phase of the RIF set up.

- 1.11 The RIF MoU was considered by the HGGT Board on 12 October 2021 and, following some final detailed amendments has been agreed by the GT partners for submission to the East Herts District Council Executive; the Epping Forest District Council Cabinet; the Harlow District Council Cabinet and the relevant portfolio holders of Essex and Hertfordshire County Councils for agreement before submission to Homes England.

2.0 RIF MoU

- 2.1 The purpose of this report is to enable Executive to consider the final version of the RIF MoU and to formally confirm its approval. The finalised document is attached as **Appendix 1**.
- 2.2 With the amendments set out above following the engagement between the HGGT Authority partners it is now considered that a robust final document has been produced and one which can be approved.
- 2.3 Once approved by all of the HGGT Authority partners, the RIF MoU will be submitted to Homes England by the end of November 2021 to articulate the collective agreement and set out the mechanism through which the HGGT Authority partners will initially agree how to operate the RIF.
- 2.4 Following agreement to approve the MoU, the Council will continue to work with the wider HGGT Authority partners around detailed work to set up and govern the RIF.

2.5 The Memorandum of Understanding sets out the terms under which the RIF will be set up. It does not go into detail but sets out the guiding principles. These are:

- Unanimous approval of all partners is required to set up the RIF;
- The RIF will be brought into one fund as soon as practicable;
- The RIF will be managed and governed by HGGT as a partnership of the five local authorities;
- The setting up of the RIF will take any new governance arrangements into account.

2.6 The establishment of the RIF needs unanimous approval, support and potentially resourcing from all the HGGT Authority partners. Detailed work is currently underway to reshape the HGGT governance which is considering delegations and arrangements for dealing with the future management and allocation of funding from the RIF. If the recommendations of the governance review are agreed and include delegation from the partners to manage the RIF, a more formal, transparent and democratic governance system could be put in place. If this is the case its features, in terms of how collective decisions and strategic management of the RIF are handled will determine the future governance and administration of the RIF. As part of these new governance arrangements mutual resourcing of the RIF and risk share in relation to it will need consideration by the partners, especially if the RIF is brought into and managed as a single fund as soon as possible as advised by Homes England.

2.7 Once all the HGGT Authority partners have ratified the RIF MoU it will be submitted to Homes England (Via HCC) to get

sign off of the condition which will impact ability to draw down on HIG funds. The milestone for satisfying this condition by submitting an agreed/signed MoU is the end of November 2021.

- 2.8 The RIF will be the mechanism for recycling a multi-million-pound fund of public money and its decisions must be transparent, represent value for money and be robust to legal challenge.

3.0 Risks

- 3.1 Agreement to the RIF MoU is considered to mitigate risks that would otherwise be apparent in relation to the drawdown of HIG funding, the potential reuse of funding and in relation to how funds are managed and decisions around the use of funds are made. The MoU represents an element of risk sharing in relation to the HIG funding and is considered an appropriate way forward given the significant benefits that the ability to drawdown the HIG funding represents.

4.0 Implications/Consultations

- 4.1 As indicated above in the report, the evolution of the MoU has taken place through a consultative approach amongst the GT partners supported by legal advice.

Community Safety

No direct implications, but the MoU supports the drawdown of funding to be used to ensure safe and accessible transport infrastructure initially and potential other projects with community safety benefits in the future.

Data Protection

No specific implications in relation to the agreement of the MoU.

Equalities

No requirement for EIA identified

Environmental Sustainability

No direct implications, but the support the drawdown of funding to be used to delivery transport infrastructure which supports sustainable transport objectives.

Financial

As a condition of the HIG funding agreement, the ability to agree to the MoU has a direct impact in relation to the drawdown and use of the funding.

Health and Safety

No

Human Resources

No

Human Rights

No

Legal

Legal advisors have been involved in the preparation of the MoU to ensure it is robust and suitable for the purpose.

Specific Wards

Yes – Hunsdon and Sawbridgeworth (part)

5.0 Background papers, appendices and other relevant material

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