



**COUNCIL CABINET**  
**13 March 2019**

**ITEM 11**

Report sponsor: Christine Durrant,  
Strategic Director of Communities and Place  
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## **South Derby Growth Zone update and strategic approach**

### **Purpose**

- 1.1 The purpose of this report is to provide an update on the progress of the South Derby Growth Zone (SDGZ) and to make a number of recommendations that will enable the scheme to progress.
- 1.2 This project has now taken on added importance, as it is part of a major £75m Housing Infrastructure Fund (HIF) consortium bid, led by Nottinghamshire County Council (NCoC). It is the only bid from the D2N2 area and if successful, it will represent one of the biggest investments in infrastructure in the East Midlands. Cabinet approval of the recommendations contained in paragraphs 2.1 to 2.9 will provide the necessary reassurances to government in advance of the bid submission and enable the subsequent development of the scheme to progress in accordance with the necessary timescales.

### **Recommendations**

- 2.1 To delegate approval to the Strategic Director of Communities and Place, following consultation with the Cabinet Member for Adults, Health and Housing and the Strategic Director for Corporate Resources to submit the Housing Infrastructure Fund business case [jointly with Nottinghamshire County Council] and to respond to adjustments required following final discussions with the HIF consortium or officers from Homes England.
- 2.2 To delegate the acceptance of Housing Infrastructure Fund (HIF) grant funding to the Strategic Director of Communities and Place, in consultation with the Cabinet Member for Adults, Health and Housing and the Cabinet Member for Finance, Procurement and Audit.
- 2.3 To note that an Infrastructure Delivery Agreement (IDA) will be required to govern the delivery of the A50 junction and link road. An IDA is a legal agreement whereby the signatories make a contractual commitment to deliver infrastructure (this approach was successfully used by the Council on the T12 and Victory Road projects).
- 2.4 To delegate authority to the Strategic Director for Communities and Place to negotiate the terms of an Infrastructure Delivery Agreement in relation to the A50 junction and link road.

- 2.5 To delegate authority to the Strategic Director for Communities and Place to negotiate and enter an agreement with developers regarding delivery of a new primary school and all other legal documentation necessary to deliver the school.
- 2.6 To note that a further report will be brought to Cabinet for final approval of the terms of the Infrastructure Delivery Agreement once finalised.
- 2.7 To endorse the broad concept of the Development Framework Document, (attached at appendix 1), for Infinity Garden Village (IGV) and to delegate authority to the Chief Planning Officer to agree the final version following continued dialogues with South Derbyshire District Council (SDDC) and Derbyshire County Council (DCoC).
- 2.8 To approve in principle, the Council's use of Compulsory Purchase Order (CPO) powers in relation to the new A50 junction and link road.
- 2.9 Subject to the HIF bid being successful, to delegate to the Strategic Director of Communities and Place authority to carry out a land referencing exercise; issue notices requisitioning information from persons in relation to the land or other land pursuant to Section 16 of the Local Government (Miscellaneous Provisions) Act 1976; and to enter on to the land or other land for the purposes of carrying out surveys pursuant to Section 172 of the Housing and Planning Act 2016 and such other actions, including appointing agents and advisors, as may be necessary to progress a Compulsory Purchase Order (CPO), the costs of such land referencing exercise to be met by HIF monies.

## **Reasons**

- 3.1 The progression of the South Derby Growth Zone will significantly contribute to the Council's objectives relating to the delivery of housing and economic growth as detailed in paragraph 4.6 below.
- 3.2 Delegation of the final bid to the Strategic Director will enable the Council's bid to respond to adjustments required following final discussions with the HIF consortium or officers from Homes England.
- 3.3 In order to comply with the Council's Contract and Procedure rules, Cabinet authority is required to enable the Council to receive the Housing Infrastructure Fund grant monies.
- 3.4 Cabinet approval is necessary to enter into such agreements as necessary to deliver the project. Appropriate approvals are also one of the criteria of Homes England for a successful HIF Business Case.
- 3.5 Cabinet is being asked to endorse the broad concept of the Development Framework Document (DFD) for IGV, whilst recognising that final agreement on the detailed wording of the DFD between Derby City Council (DCC), SDDC and DCoC is still required.
- 3.6 Whilst the Council will endeavour to acquire the land required for the link road by negotiation, the exercise of CPO powers may be necessary, if agreement cannot be reached. Cabinet agreement to the principle of CPO is necessary to demonstrate, in

advance of the HIF submission, that the Council is prepared in principle to take the necessary CPO action if required.

## **Supporting information**

### **Background**

- 4.1 SDGZ is the name given to the wider development area, to the south of the City and extending into South Derbyshire. It includes Infinity Park Derby (IPD), which is Derby's flagship regeneration project and one of the Government's Enterprise Zones. SDGZ also includes IGV which consists of the Wragley Way (Sinfin/Stenson Fields) and Lowes Farm (Chellaston) major housing development sites which extend into South Derbyshire. IGV is one of 14 new Garden Villages announced by Government on 2 January 2017.
- 4.2 The principal project partners for SDGZ are:
- IPD Limited Liability Partnership/LLP, the commercial developer
  - Hallam Land Management the Housing promotor
  - The respective landowners
  - The 3 Local Authorities being SDDC, DCoC and DCC.
  - Bellway Homes, housebuilders
  - Respective landowners
- 4.3 SDGZ also includes Boulton Moor, which is one of the Council's major Local Plan priority sites, with a housing allocation of 800 new homes within Derby City and 1,950 in South Derbyshire. It is that part of the development within Derby City, Snelsmoor Grange, which is the subject of the HIF bid.
- 4.4 Both IGV and Boulton Moor sites are Local plan priorities with the capacity to deliver in total some 4750 new homes towards the respective housing targets set out in the Local Plans of Derby City and South Derbyshire to be delivered by 2028. Being geographically close to each other, the two sites share a number of similarities, such as their topography, being largely green field arable sites that are low lying and require a certain level of flood alleviation and drainage mitigation works. Both sites also require access from, and improvements to, the nearby strategic road network. Their location on the southern edge of Derby city and crossing into South Derbyshire means that both sites are likely to generate pupils that will feed into the new secondary school being planned in South Derbyshire.
- 4.5 In addition, both sites are being led by major housebuilders that are committed to delivering garden village principles in relation to design standards, pedestrian and cycle links and other sustainable transport provision, green and blue infrastructure and Community connectivity.

4.6 The benefits of SDGZ, including Boulton Moor, are enormous, as they unlock both housing and employment growth that would not otherwise be delivered as highlighted below:

- Up to 4,750 new homes;
- Circa 5,000 new jobs;
- Circa 4 million square feet of new employment floorspace;
- An estimated £1bn of Gross Value Added (GVA);
- A significant increase in Council tax, business rates and New Homes Bonus.

#### 4.7 The Delivery Strategy

Both the IGV and Boulton Moor housing developments require public sector intervention to deliver the necessary infrastructure that will unlock both sites. To this end, DCC and DCoC have partnered with NCoC to submit a consortium HIF bid to Government to secure the necessary infrastructure funding. The total HIF bid is expected to be in the region of £75M, with a Derby City anticipated ask of around £27m. The deadline for the HIF submission is 22 March 2019.

4.8 IGV, requires funding to contribute towards a new road junction off the A50 together with an adjoining link road that will provide access to the Wragley Way and Lowes Farm housing sites together with IPD.

4.9 In the case of Boulton Moor, the necessary infrastructure relates to a new primary school that will be required to be provided before any of the associated housing can be occupied.

4.10 The delivery strategy of each is as follows:

##### IGV – Delivery Strategy

- The public and private sector partners, developers and landowners will work in partnership to deliver the project, including key infrastructure – new A50 junction and link road, new homes and commercial floorspace.
- The public sector will deliver a new A50 junction and link road in order to unlock the land and the benefits referred to above, for which a planning application will be required. The junction and link road is anticipated to be funded as follows - £22m HIF, £8m private sector contributions, including Section 106. As highways authority for South Derbyshire, it is anticipated that DCoC will procure the construction of the A50 junction, through agreement with Highways England together with the necessary highways works in Derby City, through agreement with DCC.

- The private sector will deliver the housing, commercial floorspace and additional infrastructure required by Section 106 contributions.
- DCoC will secure highways delivery and partnership principally through an (IDA) between the partners. Other legal documentation required is likely to include a Memorandum of Understanding (MOU) between the public sector partners, procurement of contracts for works necessary to deliver the project; any legal agreements necessary to deliver the A50 Junction and Link Road; acquisitions and transfers of land required for the works.
- DCC should be prepared to use its CPO powers, in the event that agreement cannot be reached with landowners regarding the land required to build the link road; although as in 3.7 above, landowners are supportive of the scheme.
- It should be noted that DCoC Cabinet has already approved use of CPO powers for land within South Derbyshire.

#### 4.11 Boulton Moor – Delivery Strategy

- The public and private sector partners, developers and landowners will work in partnership to deliver the project.
- The public sector will deliver a new school. The cost of the new school is expected to be £6.6m, with £5m provided from HIF, with the remaining £1.6m from the private sector, including Section 106 contributions. It should be noted that the Council has already received £1.4m through Section 106 contributions.
- The private sector will deliver the housing, plus additional infrastructure required through the S106 agreement.
- DCC will reach agreements required with developers. Other legal documentation required is likely to include procurement of contracts for works necessary to deliver the project, acquisitions and transfers of land required for the works. The landowner will make the school site available and construct the initial infrastructure required, in the initial phases of the construction contract.

#### 4.12 Development Framework Document (DFD)

Cabinet is asked to endorse the concept of the DFD for IGV, in particular to note the vision for the garden village and the alignment of the link road from the new A50 junction. The DFD has been developed as a direct response to the SDDC Local Plan Part 2 policy covering SDGZ. The DFD is intended to be a joint policy document which bridges the gap between the local plan policy and delivery of the schemes, setting out the vision and guiding principles for delivery of the significant growth envisaged across the SDGZ.

- 4.13 The alignment of the link road connecting the A50 junction and IPD, shown on the concept masterplan, included in the IGV DFD, does include the edge of a Green Wedge area. The alignment of the link road has been subject to a number of revisions over recent months to reduce the impact on this Green Wedge. Whilst the siting of a road on the edge of a Green Wedge is contrary to Local Plan policy, the revisions secured are considered to have reduced the impact significantly..

- 4.14 The DFD is a working draft which still needs to be finalised by the respective partners. The recommendation relating to the DFDs is worded specifically to recognise that it will be for Planning Control Committee to determine the acceptability of the road alignment within IGV as part of the forthcoming infrastructure application. The application will be assessed against the Local Plan as a whole, balancing the benefits of the scheme against the dis-benefits. The DFD will be a material consideration in this process.
- 4.15 Development at SDGZ will be guided by DCC and SDDC Local Plan policy and by the DFD. Cabinet is asked to approve that DCC support DCoC in the submission of the planning application. An application will need to be made to both DCC and SDDC, as the infrastructure falls within both areas.

#### Potential CPO

- 4.16 In order to construct the A50 junction and link road and deliver the school, it will be necessary to secure the required land and it is one of the HIF criteria to demonstrate a strategy for this. Whilst it is expected that DCC can secure the required land through voluntary agreement, via the developers, a Compulsory Purchase Order (CPO) approach may be necessary. This report seeks to obtain Cabinet's authority in principle for such an approach, which may be a necessary safeguard in the event that negotiations fail, subject to a more detailed report in future, should a CPO approach be required. As above, DCoC's Cabinet has already authorised in principle use of CPO powers within South Derbyshire.

#### 4.17 Project Resources

It should also be noted that DCC and SDGZ partners have raised £525,000 public funding from Homes England and nearly £0.5M of private sector leverage, to progress the project to this stage. The HIF funding is required to progress to delivery.

#### 4.18 Risks

The key risks for this project, as it stands, are:

1. Planning permission is not granted. Mitigation measures – (i) further discussions have been taking place between DCC's Planning Division and the respective developers, in particular around the green wedge issue. It should be noted that planning officers are satisfied that the amended proposals do significantly mitigate against the impact on the green wedge.
2. HIF Stage 2 Business Case is unsuccessful. Mitigation measures – the project will not go ahead without public funding.

3. The case put to Highways England for an additional A50 junction is unsuccessful. Mitigation measures – the SDGZ partnership has sought advice and guidance from Highways England (HE) at every stage when developing the Strategic Case. HE is supportive, subject to us completing the planning process. Early indications of traffic modelling results suggest that the junction may be needed and DCC has shared these results with Highways England.
4. Abortive cost risk of the above. Note – spend to date has been through public sector grants and private sector leverage.
5. Reputational risk to the Council, as a result of the project not going ahead, having progressed the project to this stage, with public sector grant money and significant private sector contributions.
6. Cost overruns – this will be met by the developers. This would be contractual through the IDA. It is likely that a separate “ESCROW” bank account will be established. All contributions, including HIF grant and private sector contributions would be paid into the ESCROW account and the project effectively managed from that.

4.19 The Risk Register was the subject of a workshop by the partners on 8 August 2018, and has been the subject of a number of iterations since. A more detailed Risk Register will be developed, as the project progresses.

## **Public/stakeholder engagement**

- 5.1 Public and stakeholder engagement has principally been through the Infinity Garden Village Liaison Group, established by SDDC, which meets quarterly. This includes Ward Councillors for Sinfen and Chellaston, plus community representatives from Chellaston, in addition to Ward Councillors and community representatives from South Derbyshire..
- 5.2 The IGV Liaison Group has been consulted frequently on the DFD and Concept Masterplan, with presentations by developers Wilson Bowden and Hallam Land Management, and also by Systra, who the Council commissioned to undertake traffic modelling work.
- 5.3 Consultation will now be ongoing through the planning process.

## **Other options**

- 6.1 Option 1: Do Nothing

This is not considered a viable option, as without public sector intervention the bulk of the benefits identified in paragraph 4.5 would not be delivered.

- 6.2 Option 2: To endeavour to deliver the infrastructure without the mandate, in principle, to use CPO powers.

This approach would not however provide government and partners with the re-assurance that the development would be able to proceed in the event that the private sector partners were not able to reach agreement with landowners in relation to the necessary land acquisition.

## **Financial and value for money issues**

- 7.1 There are no cost implications directly as a result of this report however the progress of the scheme is moving ahead on the following basis.

### **7.2 IGV**

The cost of a new A50 Junction and link road is estimated at circa £30m. This figure has been signed off by a Quantity Surveyor and cost consultants employed by DCoC and will be subject to an additional, independent review by a Quantity Surveyor cost and consultants employed on the HIF bid. . The junction and link road are anticipated to be funded as follows - £22m HIF, £8m private sector contributions, including Section 106. The private sector will be responsible for meeting any cost over-runs associated with this infrastructure. There will be no Council financial contribution to these costs.

### **7.3 Boulton Moor**

The cost of the new primary school is expected to be in the region of £6.6m, with £5m provided from the HIF and the remaining £1.6m from the private sector, including Section 106 contributions. It should be noted that we have already received £1.4m through Section 106 contributions.

The HIF award will make a significant contribution towards the costs of the school with the remainder being met through the private sector S106 contributions.

### **7.4 Both Projects:**

A full Economic Case will need to be included with the Business Case. The benefits can be summarised as follows:

- Up to 4,750 new homes,
- gross development value of the new housing over £0.5bm,
- creation of over 5,000 new jobs,
- Gross Value Added minimum £1bn.



- 7.5 It should also be noted that DCC and SDGZ partners have to date raised £525,000 public funding from Homes England (with no contribution from DCC) to progress the project to this stage, which has been matched by nearly £0.5m private sector leverage, but additional funding is needed to make further progress.

## Legal implications

- 8.1 Approval is sought in principle for the approach to delivery, through an IDA for the A50 junction and link road, plus agreement with partners for delivery of the school. Other legal documentation required will include the following:

- MOU;
- procurement of contracts for works necessary to deliver the project;
- any legal agreements necessary to deliver the A50 Junction and link road and any other highways works required as a result of the planning application;
- acquisitions and transfers of land required for the works.

## 8.2 CPO Powers

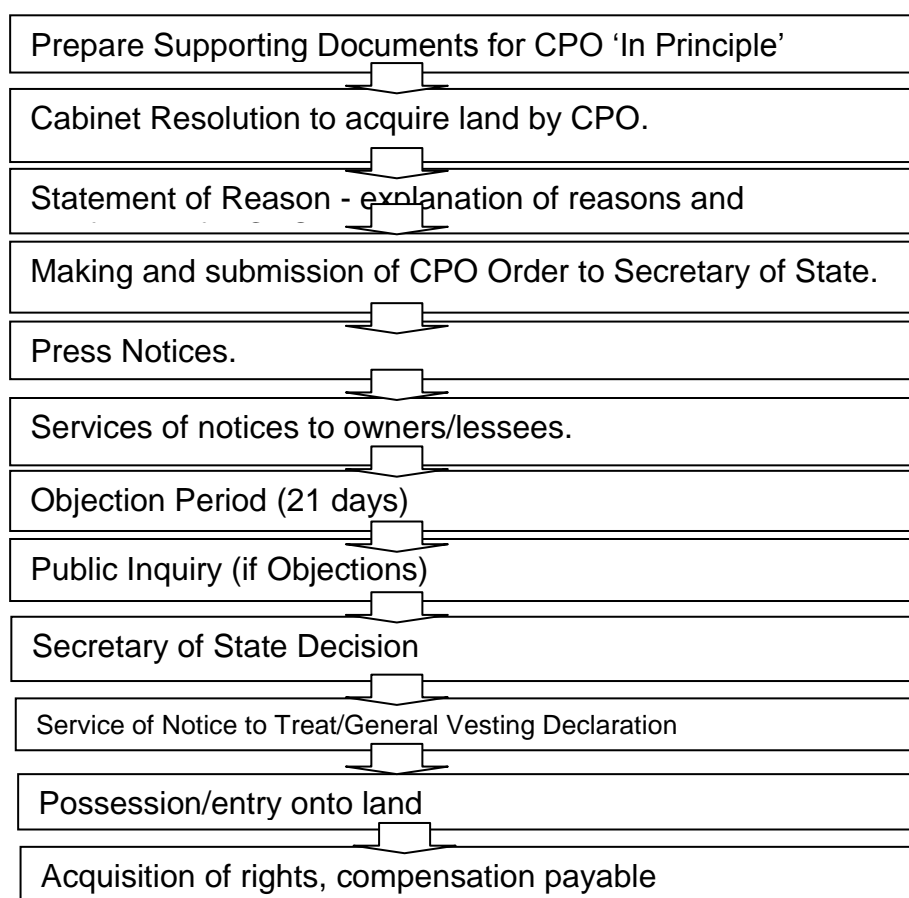
To progress a CPO the Council will need to identify the most appropriate statutory power and demonstrate a compelling case in the public interest. As to which is the most appropriate power will be determined as part of process.

- 8.3 The Council has power to CPO land under section 226(1)(a) of the Town and Country Planning Act 1990, where development, redevelopment and improvement of the land would contribute to the achievement of the economic, social and environmental well-being of the area and is likely to be the most appropriate power in the circumstances, there are also CPO powers under the Highways Act 1980 which may also be suitable.

- 8.4 Guidance on compulsory purchase is now to be found in the MHCLG published “Guidance on Compulsory purchase process and the Crichel Down Rules for the disposal of surplus land acquired by, or under the threat of, compulsion” (October 2015). Key points to note in considering using these powers are:

- the need (in most cases) to offer to purchase land by agreement before resorting to compulsory purchase;
- the need to identify the most appropriate statutory power for compulsorily acquiring the land; and
- justifying the CPO by reference to showing a compelling case in the public interest.

## 8.5 CPO Process as below (timeframe to allow 18 months)



DCC has allowed for the above within the SDGZ/IGV programme and is confident that the project can be delivered within the HIF timeframe, which requires the HIF funding to be spent by march 2023.

## 8.6 State Aid advice

DCC will need to provide State Aid advice, as part of the detailed Business Case for HIF submission and the lead body for the bid, NCoC has commissioned solicitors for this. DCC had already taken State Aid advice, from Browne Jacobson, some time ago, in relation to IGV and is satisfied that the proposed development is State Aid compliant. The State Aid guidance concluded, that there was 'a strong argument for saying the works themselves, if approved from a planning perspective, would amount to genuine public infrastructure.'

## Other significant implications

9.1 Nothing additional to the risks identified in 4.18 above.

This report has been approved by the following people:

Role	Name	Date of sign-off
<b>Legal</b>	Stephen Teasdale, Emily Feenan	21 February 2019
<b>Finance</b>	Mandy Fletcher, Head of Finance	21 February 2019
<b>Service Director(s)</b>	Greg Jennings, Director of City, Development and Growth	22 February
<b>Report sponsor</b>	Chris Morgan, Principal Regeneration Manager	18 February 2019
<b>Other(s)</b>	Paul Clarke, Chief Planning Officer	19 February 2019