

**Report to:** Strategic Planning Committee  
**Date of Meeting:** 9<sup>th</sup> December 2019  
**Public Document:** Yes  
**Exemption:** None



**Review date for release** None

**Subject:** **Delivery of the Axminster Urban Extension**

**Purpose of report:** This report is to advise Members of progress that has been made on the delivery of Axminster Urban Extension since the masterplan for the site was endorsed earlier this year and HIF monies were secured from Homes England to help to deliver the relief road.

The report needs to be considered at this time as Homes England have stated that the HIF funding may be withdrawn if a contract for the funding is not entered into by 16<sup>th</sup> December 2019.

**Recommendation:** **That Members:**

- 1. Accept that it is not going to be possible to progress with the Housing Infrastructure Fund bid as things stand and that the offer is likely to be withdrawn unless Homes England change their position on land values**
- 2. Re-engage the consultants for the Axminster Urban Extension Masterplan to:**
  - a) review options to enable as much of the development in the masterplan to proceed accepting that this would be ahead of delivery of the relief road in its entirety**
  - b) update the viability of the project to reflect the latest cost estimates and funding position**
  - c) consider the re-phasing of the development in light of the failure of the HIF bid**
- 3. Agree that a Housing Delivery Action Plan be produced to consider how to bolster the housing land supply position in the district and that this be considered by Strategic Planning Committee alongside a revised Axminster Masterplan**

**Reason for recommendation:** To enable a fully considered re-assessment of the options for the delivery of the Axminster Urban Extension in light of the current funding position.

**Officer:** Ed Freeman – Service Lead – Planning Strategy and Development Management

**Financial implications:** The Recommendations of the report, if accepted, do not lead in themselves to any direct financial implications, additional consultancy costs estimated at £20k will be met from existing funds. The report considers possible options and although not recommended at this stage could have significant financial implications if brought forward and need careful assessment.

**Legal implications:** The legal implications are detailed in the report and no further comment is required.

**Equalities impact:** Low Impact

<b>Climate change:</b>	Low Impact
<b>Risk:</b>	Medium Risk There is a significant and high risk that it is not possible to deliver the aspirations of the Axminster Urban Extension Masterplan, however this is largely because of decisions already made by Homes England. The recommendations in this report are therefore of a lower risk.
<b>Links to background information:</b>	Axminster Masterplan Committee SPC Report: <a href="https://bit.ly/34v6vkm">https://bit.ly/34v6vkm</a> Axminster Masterplan: <a href="https://bit.ly/2OVNkcU">https://bit.ly/2OVNkcU</a> Relief Road Funding Cabinet Report: <a href="https://bit.ly/2XVgEnX">https://bit.ly/2XVgEnX</a>
<b>Link to Council Plan:</b>	<a href="#"><u>Encouraging communities to be outstanding, Developing an outstanding local economy, Delivering and promoting our outstanding environment, Continuously improving to be an outstanding council.</u></a>

## Report in full

### Background

1. At their meeting of the 29<sup>th</sup> January 2019 Members of Strategic Planning Committee endorsed the Axminster North Eastern Urban Extension Masterplan for the purposes of informing decision making on future planning applications for the urban extension area and to support the Council's bid for monies under the Housing Infrastructure Fund (HIF). The masterplan sets out how an extended area to the east of the town would come forward to deliver 850 new homes and associated employment land, community facilities and open spaces. It also details how the north/south relief road for the town would be delivered using £10million of grant funding under the HIF. Members also agreed in principle at their meeting of Cabinet on 31<sup>st</sup> October 2018 to borrow the shortfall in the funding for the relief road (estimated at £6.7million) on the basis that this would be repaid through developer contributions. The viability work supporting the masterplan indicated that this would be viable and would enable the delivery of the development detailed in the masterplan including provision of 25% of the units as affordable housing.
2. This report is intended to update Members on progress with the delivery of this site and the relief road since these decisions were made by Members.

### Planning Applications

3. Planning applications have been made by The Crown Estate and Persimmon Homes for the entirety of the masterplan area. With the exception of the southern-most part of the site these applications are made in outline apart from the relief road where full planning permission is sought. The southern-most parcel is the subject of an application for full planning permission from Persimmon Homes. Negotiations continue over these developments to address detailed issues while the issue of funding of the relief road is resolved. Work is also underway on the Axe Nutrient Management Plan which is also required before consent could be granted. This is because of high nitrate levels within the river Axe and the danger of these being increased beyond acceptable levels as a result of discharge from the development and consequential impacts on bio-diversity and the habitat of the Axe. The Nutrient Management Plan should provide a greater understanding of these issues and recommend mitigation that can be secured to ensure that any impacts from the development can be appropriately mitigated. The mitigation is likely to be additional cost to the development that was not known at the masterplan stage.

### The Relief Road

4. It had been envisaged that through the HIF money and borrowing of the shortfall in funding for the relief road that the relief road would be delivered by EDDC in partnership with DCC as highway authority to enable the timely delivery of the road. The agreed phasing within the masterplan document shows the relief road being delivered by the time approximately 200 homes have been built and the employment spaces to the north of the site provided. This was predicated on the HIF monies and the associated public works and loans board loan being readily available so that the full cost of the road was available early in the build. The HIF monies had been applied for and successfully secured, it was believed, on the basis that this was grant funding and that the scheme would not be required to repay this funding. This expectation was based on the Homes England prospectus for the fund and the offer letter received from them neither of which stated that the monies would need to be repaid. It was however clear that in stating that the bid was successful Homes England would be further assessing the bid through a “project clarification” process. As a part of this process viability appraisal work was submitted to demonstrate to Homes England that the assumptions made in the application for funding that the development could not afford to provide the infrastructure on its own were correct. In response Homes England stated that they believed that the issue with the viability of the development in this case was one of cash flow rather than fundamental viability and as a result they would expect the Council to recover the £10million of funding in its entirety. The funding would however be repaid to EDDC and would be available as a revolving infrastructure fund to be administered by EDDC for investment in other housing developments across the district.
5. Homes England’s assessment that the development could afford to repay the HIF money is however considered to be based on a false assessment of the land value of the site. Homes England believe that the developers are paying too much for the site. Indeed Homes England’s assessment of the land value is approximately half of that considered to be reasonable given the site area and its established development potential. Following a meeting with senior officials from Homes England a number of actions were agreed to try and address the concerns raised. These were:
  - To revisit the values to be paid for the land in conjunction with the land owners
  - Consider options to compulsorily purchase the land
  - Consider issues of state aid
6. Officers contacted the land owners to see if they would be willing to reduce their expectations of value for the site on the basis that the development would not be able to come forward otherwise and they would not realise any value uplift over agricultural value. The land owners whose land is optioned to Persimmon Homes were not willing to entertain this option stating that if they could not realise their expected values they would simply continue to farm the land and await a more attractive offer in the future. The Crown Estate who own their land outright advised that the value attributed to their land is fixed by what they actually paid and cannot therefore be renegotiated.
7. The option of compulsorily purchasing the land either for the relief road or the whole site was also considered based on advice from Homes England that it may be possible to do so at a value lower than that expected by the land owners. Counsel’s opinion was sought from a leading barrister who advised that not only would the values for the land through a CPO have to reflect market values for the site thereby preventing any significant benefit but it is also not possible to CPO the land controlled by the Crown Estate due to historic protection afforded to the Crown. Furthermore, since the purpose of compulsorily purchasing the land would have been to deliver housing led development it would be difficult to argue the logic of purchasing land optioned to a national housebuilder to achieve this aim. In essence any CPO could be argued to run contrary to intended aim.

8. State aid advice was also sought and it was concluded that there would be no issue with providing the HIF monies as traditional grant due to the wider benefits of delivery of the relief road.
9. Finally, Counsel's advice was also sought on how the land value of the site should be assessed under the National Planning Policy Framework (NPPF), Planning Practice Guidance (PPG) and any relevant case law. This advice was then used to inform an independent valuation of the site which confirmed that the values that have been and are to be paid for the land are reasonable.
10. All of this information has been provided to Homes England, however they are not willing to accept the assessment of values provided and insist that the developers are paying too much and the monies must be recovered. Homes England argue that the guidance in the NPPF and PPG on land values is not relevant in this case. Regardless of the Government's own guidance Homes England insist on using an assessment of land value based on whichever is the greater of the existing use value +20% or a residual land valuation. It is the latter assessment that is the higher value and is based on an assessment of all of the costs of delivering the development subtracted from the expected return minus the developer profit leaving a value that can be afforded to be paid for the site. This approach however ignores the fact that the infrastructure costs of delivering this development are unusually high because of the cost of the relief road which is a piece of infrastructure that serves a wider need than just this development and therefore it is unreasonable to expect this development to cover the full cost of the road. However, arguing the wider benefits of the relief road with Homes England leads to them suggesting that funding from the Department of Transport would be more appropriate. The approach taken by Homes England also ignores market values and a reasonable return for the landowner in order to incentivise them to release the land for development. These are all factors that the PPG indicates should be taken into account. By not doing so Homes England are significantly undervaluing the site such that no reasonable land owner would be likely to sell the land for development.
11. Although officers see little merit in the arguments being made by Homes England it does not change their stance which means that they remain convinced that the development can afford to repay the HIF monies and will not provide the monies as traditional grant funding. The only way to take up the offer of HIF is to agree a repayment programme and associated cash flow with Homes England. A draft contract has been drawn up and presented to EDDC and we have been provided with a deadline to enter into this contract by the 17th December 2019 after which time the offer of funding may be withdrawn.

## Options

12. If we accept that Homes England will not change their position then officers believe that there are only two realistic options for proceeding with the HIF monies.

Option 1 - Repay and Recycle: This option would involve developing a repayment programme that is based on discounting the amount of affordable housing in the early stages of the development such that the savings on the scheme enable the repayment plan to be met. The money repaid through the early stages could then be recycled back into the development to fund the delivery of affordable housing in the latter stages of development. This would be achievable as the repaid monies are for EDDC to reinvest in infrastructure to deliver housing which is what we would be doing. Although it is clear that it is not Homes England's intention that the monies be recycled back into the same scheme they have indicated that the recovered funds would be for EDDC to spend as it sees fit as long as it is funding infrastructure to help deliver housing. It appears that there is no requirement to report how the monies are spent once they are recovered. There is however a significant risk with this approach that we do not create the mixed community envisaged by the

masterplan. Indeed it would be likely that the early phases would end up containing little or no affordable housing and then the latter phases would have to provide very high levels of affordable housing if they are to make up for the losses in the early phases or alternatively there would have to be a significant loss of affordable housing overall.

Option 2 - Affordable Housing Discount: This option would entail discounting the amount of affordable housing across the whole site from the outset. Viability testing has indicated that the affordable housing level would have to be discounted from 25% overall to 15% in order to enable the development to repay the HIF monies. However this is based on our current understanding of costings which is not as yet informed by detailed engineering drawings and costings of the road and other main infrastructure. The Axe Nutrient Management Plan could also lead to additional costs on the development from mitigation that may need to be provided. There is therefore a significant risk that costs escalate as more detailed work is completed and that the proportion of affordable housing has to drop further. It should also be noted that Homes England have been very clear that they would not welcome us reducing other infrastructure requirements to enable recovery of HIF monies as the purpose of the HIF money is to enable the housing site to proceed and the required infrastructure to be provided. Since they do not accept that the development cannot viably deliver the required infrastructure Homes England are unlikely to be willing to proceed on this basis.

13. It is worth addressing the issue of compulsorily purchase and why this doesn't present a real option. As has already been explained it is not possible to force the Crown Estate to sell their land, however it is possible to CPO the other parts of the site. It would therefore in theory be possible to work with The Crown Estate to deliver the development in partnership using the Council's CPO powers to secure the parts of the site currently optioned to Persimmon Homes. Homes England have indicated that in theory the HIF monies could be used to support this process. There are however a number of issues with this namely that Counsel's advice suggests that we would not be able to acquire the land even through CPO at a significantly lower value than is currently to be paid by Persimmon Homes. As a result the vast majority of the HIF monies would be utilised in acquiring the land, with additional sums being spent on the costs of doing so, and would not leave enough to actually deliver the road. It may be possible to deliver the road in phases with the residential development through this route but there is insufficient time to form a partnership arrangement with The Crown Estate before the stated deadline for committing to the HIF funds and even then it is considered that the CPO process would be time consuming and potentially prevent us from drawing down the HIF funds within the required timetable (currently by March 2022). There is also the risk highlighted in Counsel's opinion that our case for the CPO which is to deliver the housing development is undermined by us seeking to CPO land from under the only housebuilder involved in this process.
14. Based on the above options analysis there seems to be little prospect of agreeing a way forward with Homes England as things stand. There is of course a slim prospect that a new Government may take a different view and instruct Homes England accordingly. Other options involve trying to proceed with the urban extension without the HIF monies, for example:

Revisit the masterplan: The current masterplan was produced on the basis of the HIF monies being made available as traditional grant funding. There would be merit in revisiting the masterplan and considering what could be achieved without the HIF monies. Options may exist around further increasing the amount of development proposed in order to bring in additional resources to fund the relief road or having a structured discussion around how infrastructure requirements across the site could be revisited to enable the delivery of the relief road. Officers are however concerned that this may not yield any new ideas and trying to free up £10 million would be very difficult without heavily compromising the development. Past work has also already shown that there is a limit to the impact that expanding the site would have on viability as there is only so many homes needed in the town each year.

Long term phasing: This option would involve enabling some early phases of the development envisaged in the masterplan to proceed and deliver the associated sections of the relief road to permit access but leaving the delivery of the wider site as a longer term aspiration when funding becomes available. Essentially the southern most parts of the site are understood to be viable in and of themselves and it would potentially be possible to deliver around 200 homes by delivering only the southern-most section of the relief road. This would leave the remainder of the site to be delivered in the future should funding become available potentially through some future Government funding initiative.

It is acknowledged that this option does not achieve the community aspiration to see the relief road delivered in its entirety in advance of the rest of the site and would place additional burdens on the road network to the south of the site which would need to be tested and discussed with the highway authority. It would however enable some housing to be delivered on the site and help to support the Council's housing delivery. It is considered that this option would be best pursued through revisiting the masterplan.

Borrowing: Cabinet have already agreed in principle to borrowing the shortfall in funding above and beyond that provided by the HIF to deliver the relief road. In the absence of the HIF monies the question could be asked whether there is an appetite for borrowing the full cost of the relief road in order to see it delivered early. This option has the benefits of enabling the Council to retain control over the delivery of the relief road and its early delivery. It does however pose a major financial risk to the Council as while the master planning work undertaken so far demonstrates that the development would be able to repay the shortfall in funding with HIF monies which is estimated at £7million it is clear that the development cannot repay the full cost of the relief road. This is indeed why progressing with the HIF is extremely problematic. If the scheme cannot repay this money then if borrowed by the Council without any known route for recovering the funds it becomes a debt to the Council with no hope of repayment and would not be a financially sound solution to this issue. The only possible route to recovering the costs would be through CIL receipts, however with the funds currently held committed it would take money years to accrue £10million in CIL and this would come at the cost of delivery of many other pieces of infrastructure across the district. It should also be noted that we cannot explicitly borrow against future CIL receipts. There was also an expectation that the relief road would not impact on CIL receipts as it is a requirement of the site allocation and a piece of infrastructure which is entirely on the site. Revisions to the CIL regulations do however enable us to mix the spend of S106 and CIL receipts on the same project.

15. It could be argued that the site can no longer be delivered as envisaged in the masterplan and therefore whether the site should come forward at all. The site is however allocated in the Local Plan and can only be deallocated through a Local Plan Review. In the meantime we have applications under consideration for the site which remains allocated and so not progressing the site at all is not considered to be an option.
16. In considering the above mentioned options it should be noted that an inability to deliver any of the Axminster Urban Extension would not in itself lead to the Council no longer having a 5 year housing land supply position at the present time. It would however significantly weaken our position which at 5.5 years is not as robust as we would like. It would also lead to an increasingly difficult position within the medium term unless alternative sites could be found and brought forward. It would therefore be prudent to try and bring forward as much of the site as possible or leave ourselves more vulnerable to challenge over our housing supply position and risk housing coming forward in locations that are not envisaged in the Local Plan and are not appropriate.

## **Conclusions**

17. The above options analysis suggests that there is no credible way of proceeding with the HIF bid since the monies cannot be secured as traditional grant funding and the development cannot afford to make the required repayments. It is considered that the most appropriate way forward is therefore to try and find a way of progressing this project through some form of revised phasing of the delivery of the development to enable as much of the site to come forward as possible now with the remainder becoming a longer term aspiration to be progressed as and when funding becomes available. It is considered that this approach would serve to protect our housing delivery position and by commencing delivery of the masterplan create a stronger position for future funding bids. It is considered that such an approach should be taken forward by revising the masterplan for the site to ensure that any new phasing is informed by an up to date viability assessment and continues the co-ordinated approach for bringing the development forward in partnership with Persimmon Homes and The Crown Estate.
  
18. Alongside this it is considered that an action plan should be produced to consider what actions could be taken to bolster our housing land supply position and make this more robust in the future. Such a plan would consider how to address the loss of housing coming forward at Axminster in the short term, document the work being undertaken to unlock stalled sites and consider whether other sites should be brought forward and if so potential options for doing so.