

**Forward Plan reference number: FP/097/03/24**

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| <b>Report title:</b> Acceptance of DfT Grant Funding for a Zero Emission Bus Regional Area 2 (ZEBRA2) Bid to introduce Electric Buses in Basildon to the DfT  |                      |
| <b>Report to:</b> Councillor Tom Cunningham, Cabinet Member for Highways, Infrastructure and Sustainable Transport and Councillor Chris Whitbread, the Chancellor of Essex and Cabinet Member with Responsibility for Finance |                      |
| <b>Report authors:</b> Mark Ash: Executive Director for Director, Climate, Environment and Customer   |                      |
| <b>Date:</b> 22 <sup>nd</sup> March 2024  | <b>For:</b> Decision |
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| <b>County Divisions affected:</b> Basildon  |                      |

**Confidential Appendix**

This report has a confidential appendix which is not for publication as it includes exempt information falling within paragraph 3 of Part 1 of Schedule 12A of the Local Government Act 1972, as amended.

## **1 Everyone's Essex**

- 1.1 Everyone's Essex sets out our strategy for a strong, inclusive, and sustainable economy; a high-quality environment; health, wellbeing, and independence for all; and for making Essex a good place for children and families to grow.
- 1.2 A strong public transport network is a key enabler for all these strategic aims. It helps people access education, jobs, health services and shops, supporting our schools, colleges, high streets, and local employment. It gives people an alternative to car travel, helping to reduce congestion and carbon emissions, and so contributing to our net zero carbon goals. It enables people to live independently and to access friends and family, supporting their health and wellbeing.
- 1.3 A zero-emission bus fleet (either electric or hydrogen) will increase the already significant carbon reduction benefits of bus travel and improve air quality. In the Essex County Council Bus Service Improvement Plan 2021 – 2026 (BSIP) and Essex Enhanced Partnership Plan and Scheme 2022 – 2027 (EP) ECC proposed the Basildon Volt scheme as one of its five key bus transformation projects. The project involves the electrification of buses in Basildon. This report is to approve acceptance of funding from the Department for Transport to introduce 55 Zero Emission (at roadside) Buses and related charging infrastructure.

## **2 Recommendations**

**Cabinet Member for Highways, Infrastructure and Sustainable Transport to:**

- 2.1 Agree to enter into an agreement with the Department of Transport (DfT) to accept the award of **£4,891,585** in capital funding to Essex County Council to fund the introduction of 55 battery electric buses to the Basildon Bus network and the necessary supporting charging infrastructure at their Basildon Bus Depot.
- 2.2 Subject to suitable security being provided by a suitable company, agree to enter into a binding agreement with First Essex Buses Ltd (a subsidiary of FirstGroup Plc) to fund the introduction of 55 battery electric business to the Basildon Bus network and the necessary supporting charging infrastructure at the Basildon Bus Depot and agree to delegate authority to the Executive Director, Climate, Environment and Customer to agree the final terms of the agreement in consultation with the Monitoring Officer.

**Chancellor of Essex and Cabinet Member with Responsibility for Finance to:**

- 2.3 Agree to the addition of £4.392m to the capital programme of £737,000 in 2024/25 and £3.654m in 2025/26. The existing capital programme includes £500,000 in 2024/25 linked to this project, which was to be funded through borrowing. The project is now to be exclusively funded by external grant at a cost of £4.892m.

### **3 Background and Proposal**

- 3.1 In its Bus Service Improvement Plan 2021 to 2026 Essex County Council (ECC) submitted five priority project funding proposals aimed at transforming the Essex bus network. These included the 'Basildon Volt' project to electrify bus services in Basildon. The 'Volt' scheme was identified as the highest priority scheme due to the relatively high level of bus use in Basildon compared to other towns and cities in Essex. However, ECC was not successful in securing BSIP funding from the DfT.
- 3.2 Subsequently, ECC included a commitment in its Enhanced Partnership Plan for: "Developing an attractive, sustainable, affordable, bus network offering a realistic alternative to car use for as many people as possible and ...looking for...funding for transformational projects, delivering a step change in service delivery and a zero-carbon fleet...". In its legally enforceable Enhanced Partnership Scheme, ECC agreed in partnership with operators to develop five transformation proposals set out in part two of the investment strategy in the Bus Service Improvement Plan, and for ECC to seek funding from the DfT to progress the proposals.
- 3.3 In September 2023, the DfT launched the Zero Emission Bus Regional Area 2 scheme (ZEBRA2) grant fund and invited bids from Local Transport Authorities with a deadline of 15 December 2023. Based on the commitment in the BSIP to give priority to the Basildon Volt scheme, ECC had already contacted all operators of commercial local bus services operating Basildon in October 2022 in case a further round of ZEBRA funding occurred. Of these operators only First Essex Buses Ltd indicated a willingness to take part in a bid, which was confirmed by their parent company FirstGroup Plc, who would be sourcing the funding needed for the commercial element of the project.
- 3.4 The Cabinet Member for Highways, Infrastructure and Sustainable Transportation approved the issuing of an Expression of Interest to bid to the DfT (FP/243/09/23)

in November 2023, delegating authority to the Executive Director for Climate, Environment and Customer to approve the final form of the bid. A final bid was approved by the Executive Director for Climate, Environment, and Customer 13 December 2023 and submitted to the DfT. The submission asked for a grant of £4,959,642 to help provide 55 electric buses and associated charging infrastructure within the Basildon area. First Essex Buses Ltd will be responsible for the delivery of the project and grant funding will be paid to First Essex Buses Ltd from ECC while FirstGroup Plc provide and will be responsible for all additional funding required for the scheme.

- 3.5 DfT informed ECC of the bids success on 8 March 2024 and requested that ECC formally responded by letter accepting the grant by 21 March 2024. The grant is subject to a Memorandum of Understanding between DfT and ECC (Appendix A). An urgent decision is needed from ECC so that if the recommendations set out in this report are approved, ECC will need to implement the decision immediately in order to accept the funding. DfT have advised that if ECC wishes to accept the funding, this confirmation needs to be provided by 21 March 2024 as the first tranche needs to be processed to be paid before the end of this financial year (the last working day is 28 March 2024).
- 3.6 The grant offered by the DfT was less than that asked for in the ECC/First Essex Buses Ltd/FirstGroup Plc bid. The bid asked for £4,949,642 and the DfT grant is for £4,891,585, a difference of £58,057. This alteration was made to increase the grant by £16,821 for contingency funding to cope with unexpected events and to reduce the grant by £74,857 to allow for changes to the costs associated with managing the electricity supply at the bus station.
- 3.7 Following discussion between ECC and the FirstGroup plc on behalf of First Essex Buses Ltd, FirstGroup have indicated that the reduction in grant funding offered by the DfT does not materially affect their business case and that they are willing to proceed based on the reduced bid.
- 3.8 To receive the funding, ECC will be required to sign the MOU. The MOU, whilst it sets out that it is not legally binding, sets out a commitment that ECC is responsible for meeting any costs in excess of DfT's grant contribution, including any cost overrun or any funding contributions from third parties and agreeing to underwrite any of the funding contributions expected from third parties. In its bid application ECC made it very clear that it would not commit to making up any shortfall or cost escalation in funding for the scheme, and that the commercial risk is borne by First Essex Buses Ltd directly. Prior to submission of the bid, ECC obtained written confirmation from FirstGroup plc stating that it would accept all financial risk and cost overruns in the project.
- 3.9 To minimise the risk to ECC following the conditions applied by the DfT, ECC will enter into a legally enforceable back-to-back arrangement with First Essex Buses Ltd setting out that First Essex Buses Limited will be responsible for any cost overruns or other unforeseeable expenses incurred by the project and indemnifying ECC against this risk. ECC has received a further letter of support from FirstGroup plc on behalf of First Essex Buses Limited setting out their commitment to meeting any and all costs the project in excess of the grant funding and to extend a corporate guarantee from the parent company for the value for the grant. The draft letter to DfT (attached as **Appendix B**) set this out and makes it clear that it only accepts the grant on this basis.
- 3.10 No procurement for vehicles or supporting infrastructure will be undertaken by

ECC. All necessary procurement will be undertaken by First Essex Buses Ltd in line with the requirements set out in the DfT guidance and Green Bus Tool, including the requirement to obtain at least two firm quotes from different manufacturers for both buses and charging infrastructure.

- 3.11 It is proposed to enter into a binding 'back-to-back' funding agreement between ECC and First Essex Buses Ltd, whereby funding is passed from ECC to First Essex Buses Ltd in line with set milestones. Funding from the DfT will be paid to ECC directly in two tranches, with £3,791,809 to be paid by the end of financial year 2023/2024 and £1,099,775 to be paid by the end of financial year 2024/2025. The agreement will set out milestones for payment transfers which will need to be finalised between ECC and First Essex Buses Ltd. Payments will be made in arrears of the finalised milestones being reached, which will offer a further measure of protection to ECC. However, ECC has suggested some draft milestones around which such an agreement will be reached. It is proposed that the Executive Director, Climate, Environment and Customer approves the final terms of the agreement with First Essex Buses Ltd including the milestone payments, in consultation with the Monitoring Officer. The agreement with First Essex Buses Ltd will set out arrangements to monitor the use of the funding to ensure that it is used for its intended purpose and to allow ECC to 'clawback' any funding not used for the intended purposes and/or that the DfT determine should be recouped from ECC. The draft milestones are milestones are set out below:

#### **Draft Milestones for funding delivery**

- **Milestone 1:** Vehicle orders placed expected April 2024 Payment triggered – 25% of vehicle grant element (£687,410.50)
- **Milestone 2:** Infrastructure order placed Payment Triggered – 25% of infrastructure grant element (£550,000.00)
- **Milestone 3:** Commencement of on-site works at Basildon Depot expected July 2025 Payment Triggered – 25% of infrastructure grant element costs (£550,000.00)
- **Milestone 4:** Vehicle Chassis Laydown expected July 2025 Payment Triggered – 25% of vehicle grant element. (£687,410.50)
- **Milestone 5:** Vehicle delivery commences expected October 2025 Payment triggered 25% of vehicle grant element. (£687,410.50)
- **Milestone 6:** Vehicle delivery complete expected November 2025 Payment Triggered 25% of vehicle grant element. (£687,410.50)
- **Milestone 7:** – Infrastructure work Completed expected November 2025 Payment Triggered 50% of infrastructure grant element. (£978,687).
- A further £63,256 will be held by the DfT to act as a reserve to be called down if needed.

At each Milestone, First Essex Buses Ltd will be required to produce documentary evidence to ECC from their suppliers that the triggers have been met.

## **4 Links to our Strategic Ambitions**

- 4.1 This report links to the following aims in the Essex Vision:

- Enjoy life into old age.
- Provide an equal foundation for every child.
- Strengthen communities through participation.
- Develop our County sustainably.
- Connect us to each other and the world.

4.2 Approving the recommendations in this report will have the following impact on the Council's ambition to be net carbon neutral by 2030:

- A successful bid would result in reductions of 72,269,658 kg carbon and 28,274 kg NOx and 707kg PM 2.5 between 2025 and 2041 carbon emissions.
- The introduction of zero emission vehicles for bus routes will reduce carbon emissions, in line with ECC's climate action plan (see: <https://www.essex.gov.uk/running-council/plans-and-strategies/climate-action>) and will also reduce nitrogen oxide, sulphur dioxide and particulate emissions from buses across Basildon and the surrounding area, helping to improve air quality and health outcomes.

4.3 This report links to the following strategic priorities in the emerging Organisational Strategy 'Everyone's Essex':

- A strong, inclusive, and sustainable economy
- A high-quality environment
- Health wellbeing and independence for all ages
- A good place for children and families to grow.

## **5 Options**

### **5.1 Option 1: Do nothing (Not recommended)**

If ECC does nothing, DfT will not release the ZEBRA2 grant funding to ECC. This means that zero emission buses will not become available in Basildon until there is a commercial business case for doing so. As most buses in Essex are cascaded down to Essex after being run for some years in other parts of the Country, this could delay the introduction of zero emission buses to Basildon by a decade or more. The residents of Basildon would therefore lose the potential benefits of a successful bid, in terms of reduced pollution, noise and CO2 emissions and higher quality buses for some years.

### **5.2 Option 2: Accept the ZEBRA2 funding for electric buses in Basildon. (Recommended Option)**

This option would see ECC accept the offer of ZEBRA 2 funding from the DfT on the basis set out in paragraph 3.11 above, that offers a significant benefit to residents of Basildon, at very limited commitment from ECC (the ECC officer time required to manage the grant allocation). The outcome of accepting the grant will be to introduce modern, comfortable, quiet, Zero Emission buses into the Basildon Borough and wider Essex bus network, along with the necessary supporting charging infrastructure, ahead of the commercial business case for doing so. This would realise early the higher service standards, air quality improvements and reduced carbon emissions for the residents of Basildon Borough and some surrounding areas that the BSIP and EP set out as ECC's goals for public

transport in Essex. It would also provide both a solid exemplar and help create an engineering and driving skills base for the development of zero emission services elsewhere in Essex.

ECC will be required to manage the grant funding, delivering tranches of the grant in line with agreed milestones (subject to final agreement with First Essex Bus Limited and monitor the delivery of the project, working with First Essex Buses Ltd to mitigate any issues arising.

## 6 Issues for Consideration

### 6.1 Financial Implications

6.1.1 ECC, alongside First Essex Bus Limited submitted a bid to ZEBRA for capital grant funding of £4,959,642 to introduce 55 zero emission buses and associated infrastructure in Basildon. The bid was successful although ECC has been awarded £4,891,585, a reduction of £58,057. First Essex Bus Limited will be delivering the scheme and have confirmed they are willing to proceed on the grant awarded.

6.1.2 Per the MOU, ECC will receive the grant funding in two tranches; the first payment of £3.792m in 2023/24 and the second payment of £1.1m in 2024/25. ECC will act as the principle for the transaction and will makes payment to First Essex Bus Limited in line with agreed milestones. This will minimise the risk to ECC should DfT request any grant be repaid. The grant payment in 2024/25 is inclusive of contingency of £63,256 which may be drawn down via a change control notice as and when quantified risks materialise.

6.1.3 This paper requests an addition of £4.392m to the capital programme of £737,000 in 2024/25 and £3.654m in 2025/26. The existing capital programme includes £500,000 in 2024/25 linked to this project, which was to be funded through borrowing. The project is now to be exclusively funded by external grant at a cost of £4.892m. This reduces borrowing requirements of £500,000 for this project, with a revenue saving of £12,000 in 2024/25 and £41,000 in subsequent years.

6.1.4 **Paragraph 4.2 of the MOU sets out that “The Authority accepts responsibility for meeting any costs over and above the Department’s contribution set out in Clause 3.1, including potential cost overruns and the underwriting of any funding contributions expected from third parties.”** This clause sets out that ECC is responsible for cost overruns and also any funding contributions expected from third parties. The total value for the project is set out in confidential **Appendix D Total project value including commercial costs**. ECC will put in place a back-to-back agreement with First Essex Buses Limited, effectively mirroring the terms of the grant agreement between ECC and DfT. This will somewhat mitigate the risk, however, ECC ultimately retain the risks. It may be difficult for ECC to recover any grant that has already been paid to First Essex Buses Ltd, that DfT later seek to clawback. To further mitigate these risks, ECC will seek further security with a Parent Company Guarantee (PCG) with the ultimate parent company of the group, FirstGroup plc. If the PCG with FirstGroup plc is not forthcoming, ECC will seek security in a form that provides appropriate assurance, as agreed by s151 officer. Both the back-to-back agreement and Parent Company Guarantee will be in place before ECC makes any payments.

6.1.5 Paragraph 3.3 sets out *“The Department also reserves the right to reduce, suspend or withhold other local transport grant funding, should delivery not progress as agreed in the bid or subsequent Project Adjustment Request (established ZEBRA change control process), or the conditions of this MoU not be met.”* ECC will engage with First Essex Buses Limited and will monitor milestones, however, there remains a risk as the delivery of this is outside of the authority’s control.

6.1.6 There is a requirement for First Essex Buses Limited to operate the electric buses for 5 years. FirstGroup plc, of which First Essex Buses Ltd is a subsidiary, have signed a letter of support which outlines their commitment to meet all the terms and conditions of the grant. Further to this their Chief Financial Officer has signed a Letter of Representation to confirm that all financials provided are true to the best of their knowledge. These commitments will form part of the back-to-back agreement.

## 6.2 Legal implications

6.2.1 ECC must comply with all of the funding conditions in the MOU with the DfT or it may be liable to repay the funding. Whilst the MOU is not legally binding, it does set out the commitment between DfT and ECC and shows the intent of the parties. To mitigate the risk to ECC, when distributing the funding to First Essex Buses Ltd, ECC will enter into a back-to-back grant agreement that includes an obligation to comply with the funding conditions and contains a right for ECC to clawback funding if the funding conditions are breached by First Essex Buses Limited. The payments of the grant under the back-to-back agreement will be made to First Essex Buses Limited in arrears after confirmed achievement of certain milestones which will further limit the risk to ECC.

6.2.2 To mitigate the risk further, ECC will also seek to limit its liability and financial risk by seeking appropriate security in the form of a Parent Company Guarantee from FirstGroup plc as the parent company for First Essex Buses Limited which will provide ECC the ability to recoup any monies from First Group PLC if First Essex Buses Limited are unable to meet their obligations under the back-to-back agreement. If a parent company guarantee is not provided, ECC will seek such other form of security that will reduce the risk to an acceptable level before funding is defrayed.

6.2.3 The funding to be provided by ECC to First Essex Buses Ltd is unlikely to be a subsidy within the meaning of the Subsidy Control Act 2022 as there was an equal and transparent opportunity for all other bus operators to participate in the ZEBRA2 bid with ECC as ECC followed the process set out within paragraph 3.3 of this report. Therefore, the funding does not confer an economic advantage and is unlikely to be subject to the requirements of the subsidy control regime.

## 7 Equality and Diversity Implications.

7.1 The Public Sector Equality Duty applies to the Council when it makes decisions. The duty requires us to have regard to the need to:

- (a) Eliminate unlawful discrimination, harassment and victimisation and other behaviour prohibited by the Act. In summary, the Act makes discrimination etc. on the grounds of a protected characteristic unlawful.
  - (b) Advance equality of opportunity between people who share a protected characteristic and those who do not.
  - (c) Foster good relations between people who share a protected characteristic and those who do not including tackling prejudice and promoting understanding.
- 7.2 The protected characteristics are age, disability, gender reassignment, pregnancy and maternity, marriage and civil partnership, race, religion or belief, sex, and sexual orientation. The Act states that 'marriage and civil partnership' is not a relevant protected characteristic for (b) or (c) although it is relevant for (a).
- 7.3 The Equalities Comprehensive Impact Assessment indicates that the proposals in this report will not have a disproportionately adverse impact on any people with a particular characteristic.
- 7.4 The PSED is a relevant factor in making this decision but does not impose a duty to achieve the outcomes in s.149, is only one factor that needs to be considered, and may be balanced against other relevant factors.
- 7.5 An Equalities Comprehensive Impact Assessment has been undertaken for the bid process and indicates that there are specific positive benefits for the following groups from establishing Zero Emission Bus operations in Basildon on the grounds that they are disproportionately likely to make use of the buses:
- Older people,
  - People with disabilities,
  - Women,
  - Children and Adults with SEND,
  - Residents of Basildon Borough.
- 7.6 It was considered that some other group might also benefit, but that insufficient data was available to be able to say so with certainty. It would also help meet ECC's climate change policy objectives to reduce CO<sub>2</sub> emissions.
- 7.7 The ECIA is included as Appendix C. In ECC's view there are no adverse implications from this decision for any of the protected groups.

## **8 List of Appendices**

- Appendix A DfT Memorandum of Understanding (MOU) regarding acceptance of ZEBRA2 Grant Funding
- Appendix B Letter to DfT accepting the Grant Funding
- Appendix C Equality Comprehensive Impact Assessment.
- Appendix D Confidential Appendix

## **9 List of Background papers.**

CMA: FP/243/09/23 - Zero Emission Bus Regional Area (ZEBRA) Funding Bid for Electric Buses in Basildon



| <b>Role</b>   | <b>Date</b>       |
|---|-------------------|
| <b>I approve the above recommendations in relation to my portfolio set out above for the reasons set out in the report.</b> | <b>22.03.2024</b> |
| <b>Councillor Tom Cunningham, Cabinet Member for Highways, Infrastructure and Sustainable Transport.</b>                    |                   |
| <b>I approve the above recommendations in relation to my portfolio set out above for the reasons set out in the report.</b> | <b>22.03.2024</b> |
| <b>Councillor Chris Whitbread, Chancellor of Essex and Cabinet Member with Responsibility for Finance</b>                   |                   |
| <b>Executive Director Climate, Environment and Customer.</b>  | <b>21.03.2024</b> |
| <b>Mark Ash</b>   |                   |
| <b>Executive Director, Corporate Services (S151 Officer)</b>  | <b>21.03.2024</b> |
| <b>Stephanie Mitchener on behalf of Nicole Wood</b>   |                   |
| <b>Director, Legal and Assurance (Monitoring Officer)</b>   | <b>21.03.2024</b> |
| <b>Susan Moussa on behalf of Paul Turner</b>  |                   |

**Exemption from call in.**

I agree that it is in the best interests of the Council for this decision to be implemented urgently and therefore this decision is not subject to call in (paragraph 18.3 of the constitution applies).

**Councillor Chris Pond – Chairman of the Corporate Policy and Scrutiny Committee**

**Date: 20 March 2024**