

Forward Plan reference number: FP/203/10/21

Report title: Decision to enter into a Memorandum of Understanding relating to the Rolling Infrastructure Fund for the Harlow and Gilston Garden Town	
Report to: Councillor Kevin Bentley, Leader of the Council	
Report author: Ashley Heller, Head of Transport for Future Communities	
Date: 6 December 2021	For: Decision
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County Divisions affected: All divisions in Harlow and Epping Forest Districts	

1 Everyone's Essex

- 1.1 The Memorandum of Understanding for the management of the Rolling Infrastructure Fund (RIF) for the Harlow and Gilston Garden Town (HGGT) will support ECC, Hertfordshire County Council, Harlow District Council, Epping Forest District Council and East Herts District Council (the HGGT Partners) in securing funding for sustainable infrastructure helping to deliver economic growth through providing resilient transport links and helping to spread the benefits of this growth to new and existing residents. These transport links will support sustainable transport outcomes, deliver an improved public realm, and facilitate the delivery of high-quality development in Harlow and the surrounding area. More sustainable transport choices and infrastructure will provide for greater transport options for Essex residents including active travel options which support health and wellbeing.
- 1.2 Together the additional funding for infrastructure facilitated by this decision will support the achievement of ECC's climate change objectives by providing realistic alternatives to the car through well planned and effective sustainable transport interventions.

2 Recommendations

- 2.1 To agree to enter into a Memorandum of Understanding relating to the Rolling Infrastructure Fund for the Harlow and Gilston Garden Town in substantially the form set out in Appendix 1.
- 2.2 To agree that the Director, Sustainable Growth is authorised to enter into the Memorandum of Understanding for the Harlow and Gilston Garden Town.
- 2.3 To agree that officers work alongside the HGGT Partners to explore the establishment of a Joint Committee for the Harlow and Gilston Garden Town and that a paper be brought to the Leader to agree ECC's role in the Joint Committee.

3 Background and Proposal

- 3.1 In March 2021, ECC and Hertfordshire County Council (“HCC”) entered into an agreement under which ECC would deliver infrastructure works in Essex funded by the Housing Infrastructure Grant (the “HIG”), a capital grant programme paid to HCC by Homes England.
- 3.2 The purpose of the HIG is to provide infrastructure to unlock new homes in East Hertfordshire, referred to as the Gilston Villages, which are a part of the wider Harlow Gilston Garden Town (HGGT) which is planned to encompass 23,000 new homes by 2040. The HIG, which funds infrastructure to help mitigate the impact of these new homes, will help to deliver transformative investment to support sustainable living and a healthy economy, providing a high quality of life for existing and future residents of Harlow and the surrounding area.
- 3.3 Under the agreement with HCC, ECC is eligible to receive £42.1m (payable in arrears) to implement works in Harlow to develop a sustainable transport corridor North to Centre including works to the Burnt Mill Roundabout and a new road junction at Cambridge Road to the east of Harlow (collectively referred to in this report as the “Project”). These works will deliver priority routes for buses/cyclists and pedestrians and improve accessibility to key locations in Harlow such as the town centre, rail station and Temple Fields Industrial area.
- 3.4 The HGGT approach is based on a presumption of sustainable development. The developers of the Gilston Villages (the first and largest housing site in the area) have committed to 60% of journeys from the development using sustainable means. This shift will significantly help improve people’s health, support good air quality, minimise carbon emissions and tackle congestion in and around Harlow and the wider strategic road network. Playing our part in delivering this shift also forms part of ECC’s wider commitments to increase sustainable travel and tackle climate change, including in our response to the Essex Climate Action Commission. This approach is endorsed by the recently adopted HGGT Transport Strategy as well as the wider transport policy context and is essential to help mitigate the overall transport impacts of the development on Harlow and the wider strategic road network.
- 3.5 To contribute towards achieving this, significant investment is required by developers of HGGT to provide sustainable transport corridors (STC’s) across Harlow. The HIG is intended to be used to both directly fund the delivery of the first phase of the STCs from the Gilston Villages to Harlow town centre and to secure a recovery and recycling strategy (“RRS”) for the funding of future phases of the STCs using s106 planning contributions.
- 3.6 The HIG money funds the first infrastructure works, with the cost being reimbursed by the developers of the land whose development is facilitated by these works by means of planning contributions. The money ‘recovered’ can then be used to fund a further phase of investment in infrastructure. Without the HIG money, there would be no forward funding of infrastructure meaning that

there would be a delay to the housing delivery and no basis of recovery. This approach is referred to as the rolling infrastructure fund (the “RIF”).

- 3.7 The RIF is therefore a powerful tool, and potential source of infrastructure funding, to help fulfil the HGGT vision and bring about transformational change to the whole Harlow area. If the infrastructure spend is controlled and if sufficient developer contributions and tariffs can be collected, the RIF could “roll” several times.
- 3.8 ECC as a partner in the HGGT, and as the highway authority for Harlow, has played an ongoing role in the negotiations of the RIF as part of a strong and collaborative partnership with the HGGT Partners. The establishment of the RIF will help ECC to secure positive outcomes for the STCs from the s106 negotiations, including maximising recovery of HIG funding into the RIF to support future infrastructure delivery. The HIG and associated recycling through the RIF offer significant benefit to residents of Essex across the HGGT area, specifically Harlow and Epping Forest, by providing funding for infrastructure to help deliver sustainable growth while also catering for housing need as defined by the relevant Local Plans. As a significant proportion of the RIF contributions are likely to accrue to the Gilston Villages development within Hertfordshire, this funding would not ordinarily be available for infrastructure uses within Essex. The RIF provides a mechanism for some of that funding to be used to deliver infrastructure in Harlow, as the focal point for the HGGT.
- 3.9 It is a requirement of Homes England that the HGGT Partners agree arrangements for the management of the RIF and that HCC enter into a memorandum of understanding (“MOU”) that clearly states the allocation and prioritisation of the use of monies within the RIF for the purposes of delivering infrastructure works to unlock the housing. The form of the MOU must be approved by Homes England.
- 3.10 The MOU is not legally binding but sets out the basis on which the HGGT Partners will collaborate to operate the RIF. At this stage, the RIF is not being held by a single entity, instead each Council will hold payments from relevant developers in a separately identifiable interest-bearing account. If any decision is required in relation to the RIF, or any expenditure from the RIF is required, each Council will follow its own decision-making process to determine the decision to be taken however the HGGT Garden Town Board may make a non-binding recommendation to such Council(s). Such Council shall also consult with the HGGT Partners to the extent that such decision impacts on the recovery of the HIG as decisions about the funding of infrastructure for the HGGT could present a risk to delivering the HGGT vision.
- 3.11 The HGGT Partners acknowledge in the MOU that it is their intention that the RIF will be applied to the STCs and related infrastructure and that they will seek to recover 100% of the HIG from developers promoting developments in the HGGT. However, while the HIG funds the first phase of the STCs, even full recovery of the HIG into the RIF will not cover the full cost of the future phases of the STCs in their entirety. Entering into the MOU does not cause this future funding gap but instead commits the HGGT Partners to co-operating with each other to try to

close the gap using section 106 contributions and additional grant and revenue funding, for example from Government and other sources.

3.12 An MOU has been agreed in principle by the HGGT Partners subject to each Council going through their respective governance processes. Homes England are in agreement with this form of MOU.

3.13 The HGGT Partners are considering longer term arrangements for the ongoing management of the RIF and the oversight of the HGGT using a Joint Committee. It is considered by the HGGT Partners that a Joint Committee arrangement will help to deliver the sustainable growth that is needed. Officers will work with the HGGT Partners on this proposal and a report will be brought to the Leader when proposals are more progressed.

4 Links to our Strategic Ambitions

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

- Develop our County sustainably
- Connect us to each other and the world
- Share prosperity with everyone

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:

- Supporting delivery of sustainable transport infrastructure will facilitate modal shift, reducing dependency of the car and reducing the impact of development in Essex.
- The HIG and associated RIF provide significant funding to delivery key transport infrastructure early in the development cycle, facilitated positive travel behaviour change for new residents.

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 – Enter into the Memorandum of Understanding – recommended option

The recommended option is for ECC to enter the MOU. A managed and co-ordinated approach to the RIF benefits ECC due to the large amount of potential s106 contributions which could be secured, and which may not ordinarily be

available for infrastructure investment in Essex as they will arise from the Gilston development in Hertfordshire. The concept of the RIF is an important recovery mechanism for ensuring that sustainable transport links are in place and to assist in delivering the sustainable transport vision for HGGT, although it is recognised that the RIF is unlikely to secure the full amount of funding required to fund the transport needs of the HGGT. The requirement to enter into the MOU is also a milestone set by Homes England and failure to achieve this milestone could impact the entirety of the HIG funding.

5.2 Option 2 - Do not enter the MOU

The alternative option is not to enter the MOU. The advantages of this option are that future S106 receipts gained from strategic sites which are required by ECC will be dealt with in the normal way and therefore be under the sole control of ECC once secured. The disadvantages of this option are that the RRS milestone will not be met, and this could result in a default on the HIG with consequent impacts on the funding of the ECC projects and other projects which are key to the delivery of infrastructure for the HGGT. ECC will also be seen as undermining the HGGT partnership which may result in less co-operation on key matters across the HGGT areas, which in turn may harm ECC's interests, particularly given the scale of development on the Essex borders at the Gilston Villages. ECC will also likely gain significantly less s106 funding towards the STCs if the MOU is not entered into because receipts from the HGGT Partners may be held by other authorities and could be used entirely for purposes other than those set out in the MOU.

6 Issues for consideration

6.1 Financial implications

6.1.1 Entering the MOU will provide ECC with long term access to the RIF across the HGGT area, as part of the HGGT partnership. The rate and amount of the monies secured for the RIF will be dependent on the scale and pace of housing delivery across HGGT. Reductions to, or deferral of, housing outputs will diminish the value of the RIF against anticipated projections. For example, if housing is delivered later than anticipated in the Local Plan trajectories, S106 funding will be delayed. While recognising the objective within the RIF is to maximise recovery of the original grant funding, given future economic uncertainty, its impact on the housing market and the number of underlying variables it is not possible to provide a credible and substantiated estimate of the future value of the RIF. Each S106 agreement will be subject to its own negotiation process and planning tests as is currently the case.

6.1.2 The RIF will be funded from S106 receipts paid by developers arising from strategic housing development. There is no expectation nor legal obligation that ECC will invest in the RIF. Nevertheless, it should be noted that as the HGGT partnership deepens, more structured and formal arrangements are likely to generate greater requirement for ECC resource to support operational activity. Unless this additional resource requirement can be contained within the existing

funded staff base, any increase in resource would create a revenue cost pressure for which funding would need to be identified. Currently ECC provides 'in kind' resources of officer support for HGGT from its existing funded staff base.

6.1.2 The RIF is unlikely to secure sufficient s106 receipts to meet the totality of investment which will be required to deliver all the sustainable transport infrastructure aspirations across HGGT. The scope of investment will be constrained by the value of the RIF unless other match funding streams are identified. There are no obligations conferred within the MOU for any party to close the funding gap by making financial contributions.

6.1.3 The MOU allows HCC to claim an amount for costs associated with the closing down of the HIG beyond March 2025, should other funding not be sufficient. This amount is limited in principle to £80,000 per annum and will be funded from the RIF. This is subject to auditable records being provided of expenditure and a dispute resolution process is defined in the MOU should the partners not be agreeable to the claims.

6.2 Legal implications

6.2.1 The proposed MOU sets out the terms pursuant to which relevant s106 contributions will be allocated between the HGGT Projects.

6.2.2 It is a requirement of Homes England that an MOU is entered into although the MOU is stated to be non-legally binding and provides high level terms only. Each HGGT Partner will need to continue to follow its own decision-making process prior to taking any decision that could impact the RIF.

6.2.3 Future governance arrangements are likely to be required to manage the RIF as a single fund and to ensure that the mechanism for recovery and recycling of the RIF can be sustained on a longer-term basis. Any decision about a joint committee arrangement will be taken as a separate decision.

7 Equality and Diversity Considerations

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, gender, 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 equality impact assessment indicates that the proposals in this report will not have a disproportionately adverse impact on any people with a particular characteristic.

8 List of Appendices

8.1 Equality Impact Assessment.

8.2 Draft Memorandum of Understanding.

9 List of Background papers

9.1 Cabinet Report dated 26 March 2021.

I approve the above recommendations set out above for the reasons set out in the report.	Date 09/12/21
Councillor Kevin Bentley, Leader of the Council	

In consultation with:

Role	Date
Mark Doran, Director, Sustainable Growth	24/11/21
Executive Director, Corporate Services (S151 Officer) Stephanie Mitchener on behalf of Nicole Wood	03 December 2021
Director, Legal and Assurance (Monitoring Officer) Katie Bray on behalf of Paul Turner	6.12.21