

Report title: Getting Building Fund Capital Programme update	
Report to: Accountability Board	
Report author: Helen Dyer, SELEP Capital Programme Manager	
Meeting date: 27 January 2023	For: Decision
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SELEP Partner Authority affected: All	

1. Purpose of report

- 1.1. The purpose of this report is to provide the Accountability Board (the Board) with a brief update on the Getting Building Fund (GBF) programme. The report solely focuses on decisions which need to be made in advance of the next meeting (10 March 2023) and which will have a bearing on the ability of local partners to complete their GBF spend by 31 March 2023 in accordance with Government expectations. A full update of the GBF programme will be provided at the next meeting.
- 1.2. The report provides an update on the Swan Modular Housing Factory project and the ASELA LFFN Phase 3 project.

2. Recommendations

- 2.1. The Board is asked to:
 - 2.1.1. **Agree** the removal of the Swan Modular Housing Factory project from the GBF programme. The £4.53m GBF issued to Essex County Council should be returned to Essex County Council, as Accountable Body for SELEP, within 4 weeks of this Board meeting for reallocation to alternative projects.
 - 2.1.2. **Agree** that the GBF funding awarded to support the ASELA LFFN Phase 3 project can be released to Southend-on-Sea City Council, rather than Thurrock Council as originally agreed, subject to provision of all outstanding Local Growth Fund (LGF) and GBF year end declarations by Southend-on-Sea City Council.

3. Swan Modular Housing Factory

- 3.1. The Swan Modular Housing Factory project was seeking to bring forward a new modular housing factory in Basildon. It was forecast that the factory would deliver up to 1,000 homes per year from January 2024.
- 3.2. The project was awarded £4.53m GBF funding in November 2020 and, as at 30 September 2022, £1.458m of the GBF allocation remained unspent. This unspent funding is currently being held by Essex County Council.

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- 3.3. In December 2022, Swan advised Essex County Council that the Swan Board had made the decision to close their modular factory operations by the end of December 2022. This decision was taken as it was not financially sustainable to continue to construct homes in that way. As a result of this decision, delivery of the modular housing factory being supported by the GBF funding has been halted and Swan have committed to returning the GBF funding which has already been spent to Essex County Council. Therefore, at this meeting, the Board are asked to agree the removal of the Swan Modular Housing Factory project from the GBF programme.
- 3.4. Whilst Swan have committed to repaying the GBF funding, a repayment schedule has not yet been agreed with Essex County Council. Essex County Council are urgently seeking a meeting with Swan to discuss this further.
- 3.5. Under the terms of the Service Level Agreement in place between SELEP Ltd., Essex County Council (as Accountable Body for SELEP) and Essex County Council (as Upper Tier Local Authority), Essex County Council (as Upper Tier Local Authority) are required to repay funding received in relation to a project if it can no longer deliver in accordance with the agreed Business Case. Therefore, in order to facilitate timely reallocation of the GBF funding and to maximise GBF spend by 31 March 2023 in line with Government expectations, Essex County Council will be asked to repay the full £4.53m GBF allocation in advance of Swan returning the funding to the council.
- 3.6. As a result of the removal of the project from the GBF programme, the following benefits will not be realised:
 - 3.6.1. Creation of 248 FTE gross operational jobs
 - 3.6.2. Assisting 144 new learners
 - 3.6.3. Manufacturing of 2,500 steel MMC modules per annum by year 5, along with expansion of cross laminated timber (CLT) MMC module production to 1000 by year 5
 - 3.6.4. Supporting the development of 1,500 new homes over a five-year period, of which 40% (600) are estimated to be affordable.
- 3.7. If the Board agree the removal of the project from the GBF programme, a Variation Agreement will be completed which will formalise this change. Essex County Council, as Upper Tier Local Authority, will be required to repay the full £4.53m GBF allocation to Essex County Council, as Accountable Body for SELEP, within 4 weeks of this Board meeting to allow reallocation to alternative projects via the agreed GBF prioritised project pipeline.
- 3.8. The value of the funding being returned to SELEP exceeds that sought by the projects remaining on the GBF project pipeline, and therefore whilst the award of £2.481m GBF funding to the pipeline projects is considered under Agenda Items 6 and 7 at this meeting, it won't be possible for the GBF allocation to be spent in full by 31 March 2023 and therefore Government expectations will not be met.
- 3.9. Advice has been sought from Central Government with regard to their position on GBF spend which extends beyond 31 March 2023 but a formal response has not yet been

provided. The advice given will impact on the funding decision in relation to the Techfort Phase 2 project as spend of £85,000 of the additional GBF funding sought, will extend into Q1 2023/24. In addition, there are two East Sussex projects which are not currently included in the GBF project pipeline due to delivery issues identified during prioritisation. In accordance with the prioritisation report provided to Strategic Board, the status of these projects will be revisited and the Strategic Board will be asked to consider whether the projects should be added to the pipeline at their meeting on 10 February 2023. There is sufficient GBF funding available to support both projects if Strategic Board agree their inclusion in the pipeline but it is likely that GBF spend on those projects will extend into at least Q3 2023/24.

- 3.10. As the £4.53m to be returned to SELEP exceeds the value of the GBF project pipeline, advice has also been sought from Government as to how this funding should be utilised. Given that a new GBF project pipeline has recently been created and fully utilised and given that the end of the GBF programme is rapidly approaching, alternative options for use of the funding will need to be considered. These options will be presented to the Board once advice has been received from Government.

4. ASELA LFFN Phase 3

- 4.1. As the Board will recall, the award of £500,000 GBF funding to support delivery of the ASELA LFFN Phase 3 project was agreed at the last Board meeting (25 November 2022).
- 4.2. The Association of South Essex Local Authorities (ASELA) LFFN – Phase 3 project is a continuation of the DCMS (Phase 1) and GBF (Phase 2) funded project. The LFFN project seeks to deliver fibre connectivity across the South Essex region, with the aim of realising benefits for local businesses and communities. Access to fibre connectivity allows these businesses and communities to flourish in a post COVID-19 world.
- 4.3. Delivery of Phase 3 of the project will allow the extension of fibre infrastructure across the South Essex region allowing work in some key 'Not Spot' areas which have not yet benefited from investment. In addition, the GBF funding will enable the fibre infrastructure to be linked with the Southend region fibre network, which will have significant benefits for the whole ASELA region in terms of sharing of services, cost savings and supporting the rollout of a pan ASELA Internet of Things (IoT) network to include the Southend area.
- 4.4. At the time of funding award, it was agreed that the GBF funding would be issued to Thurrock Council, as was the case for the GBF funding awarded to support Phase 2 of the LFFN project. However, following the decision by Thurrock Council to issue a Section 114 notice (a notice issued by the Section 151 Officer if the council cannot balance its budget in-year), alternative options for release of this funding have been considered.
- 4.5. Since award of the GBF funding to support Phase 2 of the project, financial responsibility for ASELA has transferred from Thurrock Council to Southend-on-Sea City Council. As a result, ASELA originally requested that the GBF funding issued to Phase 3 of the project be released to Southend, rather than Thurrock.
- 4.6. The agreed process for creation of a new GBF prioritised project pipeline included a requirement for all Upper Tier Local Authorities to be up to date with all reporting and year end declaration requirements, as set out in the Service Level Agreements, if they were to

be eligible for receipt of additional GBF funding. Southend-on-Sea City Council are not up to date with their year end declarations for either the LGF or GBF funding streams and therefore the request from ASELA could not initially be accommodated.

- 4.7. Whilst Southend have still not completed the outstanding year end declarations, it is considered that release of the funding to Southend-on-Sea City Council is the most appropriate solution given the change in situation at Thurrock Council. This approach would provide greater assurance for Essex County Council, as the Accountable Body for SELEP, and would also simplify the financial processes for ASELA.
- 4.8. As a result, the Board are asked to agree that the £500,000 GBF awarded to support the ASELA LFFN Phase 3 project can be released to Southend-on-Sea City Council, rather than Thurrock Council as originally agreed. This would be subject to completion and submission of the following outstanding year end declarations by Southend-on-Sea City Council:
 - 4.8.1. 2020/21 LGF year end declaration
 - 4.8.2. 2021/22 LGF year end declaration
 - 4.8.3. 2021/22 GBF year end declaration
- 4.9. At the time of funding award, a commitment was given that the GBF funding awarded to support the ASELA LFFN Phase 3 project would be spent in full by 31 March 2023. Due to the need for further consideration as to who should be the recipient of the funding and the associated delay in progressing the required Variation Agreement, ASELA have not yet been able to commit to delivering the additional works and therefore there is a risk that the GBF funding may not be spent in full by 31 March 2023. To minimise this risk, it is imperative that the outstanding year end declarations are provided at the earliest opportunity.
- 4.10. If the Board agree that the funding can be released to Southend-on-Sea City Council, following receipt of the completed year end declarations, a Variation Agreement will be put in place between SELEP Ltd, Essex County Council (as Accountable Body for SELEP) and Southend-on-Sea City Council. Once this Variation Agreement is completed, it will be possible for the funding to be released to Southend-on-Sea City Council in accordance with usual processes.
- 4.11. If the Board do not agree that the funding can be released to Southend-on-Sea City Council, or Southend do not complete the required year end declarations in a timely fashion, alternative options for release of the funding will need to be considered. However, this may result in the Board being asked to agree the cancellation of the project or could lead to GBF spend extending beyond 31 March 2023.

5. Financial Implications (Accountable Body comments)

- 5.1. Essex County Council, as the Accountable Body, is responsible for ensuring that the GBF funding is utilised in accordance with the conditions set out by Government for use of the Grant. This is managed through a Service Level Agreement (SLA) that is in place with each

Partner Authority and sets out the conditions of the grant and those in respect of the SELEP Assurance Framework.

- 5.2. It is a requirement of the SLA that when the Board approves a decision to cancel a Project that the funding awarded is required to be returned to the Accountable Body; this may include funding that has already been defrayed, where, for example, delivery of a project has not been completed, meaning that the spend has become an abortive cost and, consequently, the grant conditions for Capital spend can no longer be met. Spend of £3.072m has been reported to date on the delivery of the Swan Modular Housing Factory project by Essex County Council, with the remaining £1.458m still being held by the Council; in cancelling the project, the full £4.530m is requested to be returned to Essex County Council as Accountable Body for SELEP, to enable reallocation to other projects on the pipeline. The agreement between Swan Housing Association and Essex County Council provides Essex County Council with the right to request full repayment of the funding.

- 5.3. GBF was allocated through a grant determination from MHCLG (now Department of Levelling Up, Housing and Communities) via section 31 of the Local Government Act 2003; this is subject to the following condition:

The grant may be used only for the purposes that a capital receipt may be used for, in accordance with regulations made under section 11 of the Local Government Act 2003.

- 5.4. The grant conditions do not impose an end date for use of the funding, albeit that it was the expectation of Government that all funding was defrayed by 31 March 2022.
- 5.5. As the GBF investment pipeline is less than the available funding, an approach for prioritisation to reallocate any residual funding will need to be agreed by the Strategic Board, in line with the requirements of the Assurance Framework.

6. Legal Implications (Accountable Body comments)

- 6.1. The funding is administered in accordance with the Service Level Agreements in place between Essex County Council, as Accountable Body of SELEP, SELEP Ltd and the Partner Authority. The SLAs contain provisions that permit the Accountability Board to take a decision to require funding is repaid (either in all or in part) if the Partner Authority fails to deliver the project in accordance with the business case, a project is changed and the Accountability Board decline to agree the change, or if the project can no longer meet the grant conditions. If any Project is cancelled, the provisions set out with the SLA will be activated, and Essex County Council will work with the Partner Authorities to recover any abortive revenue costs.

7. Equality and Diversity Implications

- 7.1. Section 149 of the Equality Act 2010 creates the public sector equality duty which requires that when a public sector body makes decisions it must have regard to the need to:

- 7.1.1. Eliminate unlawful discrimination, harassment and victimisation and other behaviour prohibited by the Act

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- 7.1.2. Advance equality of opportunity between people who share a protected characteristic and those who do not.
- 7.1.3. 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, race, religion or belief, gender and sexual orientation.
- 7.3. In the course of the development of the project business case, the delivery of the Project and the ongoing commitment to equality and diversity, the promoting local authority will ensure that any equality implications are considered as part of their decision-making process and where possible identify mitigating factors where an impact against any of the protected characteristics has been identified.

(Any request for background papers listed here should be made to the person named at the top of the report who will be able to help with any enquiries)

Role	Date
Accountable Body sign off Michael Neumann (on behalf of Nicole Wood, S151 Officer, Essex County Council)	18/01/2023