

Forward Plan reference number: FP/076/03/24

Report title: Contract Award for the Construction of Section C of the Colchester Rapid Transit System

Report to: Cllr Bentley, Leader of the Council

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Date: 22 April 2024

For: Decision

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County Divisions affected: Wivenhoe St Andrew and Tendring Rural West

Confidential Appendix exemption

Confidential Appendix exempt from publication by virtue of 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 has the aim of creating a strong, inclusive, and sustainable economy, a high-quality environment and a good place for children and families to grow. This includes a commitment to deliver and maintain high quality infrastructure to support a growing economy and the delivery of new housing and communities.
- 1.2 Together with the proposed A1331 Link Road (phase 1), the Rapid Transit System (RTS) will play a key role in unlocking land to provide circa 7,500 new homes, as well as community, business/employment, and leisure space, as part of the new Tendring Colchester Borders Garden Community (TCBGC).
- 1.3 The RTS will offer residents a high frequency public transport service on segregated or priority corridors. The RTS scheme will initially be delivered using Bus Rapid Transit (BRT) technology that is capable of evolving and being upgraded to a trackless tram in the future.
- 1.4 The wider RTS will support the commitments to climate action in Everyone's Essex by reducing traffic congestion on local roads and throughout Colchester and Tendring. The RTS will encourage residents in the new settlement and across Colchester to use public transport, reducing the number of vehicles on the network and further avoiding carbon emissions.
- 1.5 This paper recommends the award of the construction contract for the area of work known as 'Section C' of the RTS.

2 Recommendations

- 2.1 Agree to award a construction contract for the RTS 'Section C' to Milestone Infrastructure Limited to the value of £8,301,713.08 for the RTS major highways works on Greenstead Roundabout and the A133 area of Clingoe Hill.
- 2.2 Agree that the Director, Sustainable Growth is authorised to agree the final terms of, and award, the construction contract referred to in paragraph 2.1 above subject to:
 - 2.2.1 The contract being within the Capital Programme budget allocation and overall funding envelope; and
 - 2.2.2 the scheme overall being agreed as deliverable within the parameters set by Homes England.
- 2.3 Agree to reprofile the budgets within the capital programme between both the RTS and A120-A133 Link Road project (A1331) to reflect the finalised contract value, as set out in the Confidential Appendix.

3 Background and Proposal

- 3.1 Essex County Council (ECC), working in collaboration with Colchester City Council (CCC) and Tendring District Council (TDC), was awarded £99.9m of funding following a bid submitted to the Housing Infrastructure Fund (HIF). The bid supports key projects in both local authorities adopted Local Plans and the programme to deliver the new Tendring Colchester Borders Garden Community (the 'TCBGC'). The bid covered the construction of the A120-A133 Link Road (the A1331) to provide greater connectivity to the proposed new development and the provision of a Rapid Transit System (the RTS) linking the University of Essex to Colchester City Centre and other key destinations including the train station and hospital.
- 3.2 Following the approval of this bid, the Council entered into a Grant Funding Agreement (the GFA) with Homes England (HE) on 19 November 2020, as varied on 21 November 2023, for £99.9m of grant funding for the RTS and the A120-A133 Link Road project. The Link Road and RTS address a package of transport and access matters, enabling early implementation of sustainable transport options to stimulate behaviour change and address highways capacity constraints in East Colchester and West Tendring.
- 3.3 The Development Plan Document (DPD) has been prepared jointly by Tendring District Council, Colchester City Council and ECC to guide the development of TCBGC including reiterating the Local Plan requirement for the new community to have the RTS infrastructure in place and an operational service available for its new residents. The DPD was submitted to the Secretary of State for independent examination in September 2023. The Planning Inspectorate has appointed a Planning Inspector who will preside over public hearing sessions that are expected to take place in May 2024. Assuming the Inspector finds the

DPD sound, adoption of the plan will take place later in 2024 ahead of planning applications for TCBGC which are expected to be received in 2025.

Grant Funding Agreement

- 3.4 Since Cabinet approved entering into the GFA in November 2020, it was considered that the funding envelope and timescales previously agreed with HE for delivery of the Link Road and RTS could not be met. ECC received a notice of general default from HE as a result and prepared a remediation plan in response. This requested that the deadline for delivery of the Link Road and RTS would be extended and that the Link Road project would be delivered in phases.
- 3.5 Following submission of the remediation plan, Homes England agreed to the proposed changes including an extension of the overall deadline to March 2026 and a phased approach to the construction of the Link Road with the HIF funding being used for an initial southern phase (Phase 1).
- 3.6 The HIF funding is expected to cover delivery of the RTS infrastructure and Phase 1 of the Link Road. The HIF funding timeline allows ECC to claim monies from Homes England until March 2026, any expenditure beyond this timeframe will fall to ECC to fund, if no mitigation can be found.
- 3.7 The estimated costs of delivering Phase 1 of the consented Link Road and the RTS are within the £99.9m funding envelope from Homes England. With any remaining funding from Phase 1 of the Link Road and RTS, ECC may have the opportunity to continue to pursue the acquisition of the land required for Phase 2 of the Link Road (via CPO and Public Inquiry as necessary) to ensure the remaining homes can be unlocked quickly in the future once financing is available. The mechanism between the Council, CCC, TDC and the Strategic Developer for financing Phase 2 of the consented link road has been set out in a Memorandum of Understanding which was signed on 24 February 2023. This MOU means that Phase 2 of the consented link road will be funded through developer planning contributions from the TCBGC or external funding sources if available.
- 3.8 The viability update carried out for the draft Development Plan Document has demonstrated that the additional cost submitted to Homes England to complete the Link Road can be absorbed by the development (via developer contributions) without impacting other policy requirements such as affordable housing at the Garden Community. The result of these changes to the funding of the second phase of the Link Road being captured from the development will be to reduce the funding available to be recovered and recycled into additional future housing growth. Consideration of the costs of delivering the infrastructure set out in the DPD evidence, including the costs of completing the Link Road, will be assessed as part of ongoing viability reviews to ensure that the scheme remains viable and any additional funding can be recovered and recycled into additional infrastructure as per ECC's obligations in the GFA.

RTS

- 3.9 The RTS will connect the Garden Community with the University of Essex, Colchester City Centre, Colchester Railways Stations, Colchester Hospital, Colchester Community Stadium, the Northern Gateway Sports Park and the existing Park and Ride on the North side of Colchester offering high frequency services utilising segregated or priority corridors, so it takes priority over other traffic. The RTS is envisaged as a high frequency public transport service operating from early in the morning to late at night offering a realistic alternative to the private car. The designated bus lanes will also be available for use by other bus operators but will have restrictions on them for other vehicles.
- 3.10 The RTS will serve the Garden Community development and other key locations in Colchester including the City Centre and North Railway Station. The TCB developer will set out the detailed service operation model. The RTS will be bus based but aim to achieve very high levels of journey priority ensuring that buses on the RTS are competitive with private car journeys for similar trips. The HIF funded RTS infrastructure is envisaged as a part of a long-term strategy to develop RTS type infrastructure and services to other destinations as and when demand and funding allows. Further expansion of the RTS within Colchester and beyond would be subject to separate decisions in the future.
- 3.11 Section C of the RTS is located between the Greenstead Roundabout and the Boundary Road/University of Essex junction on the dual carriageway A133 Clingoe Hill, East Colchester and is a length of approximately 0.5km. The carriageway is to be widened to the nearside in the Westerly direction to create an additional lane which will allow for a dedicated bus lane. An existing zebra crossing is to be upgraded to a Toucan crossing incorporating a bus gate at the termination of the bus lane. There is nearly 200m of retaining wall and additional slab-on-edge installation along with pavement works; a new footway/cycle track; drainage including an attenuation tank and oversized pipes; street lighting; vehicle restraint system; traffic signals and planting. There are a number of statutory diversions involved but the majority will be completed separately and in advance of the Contract.
- 3.12 This decision relates to the construction of Section C of the RTS only. Section A and Section B have both commenced construction under separate delivery contracts. Section D will be delivered at a later date pursuant to a S106 planning obligation and sits outside of the HIF Funding Agreement.
- 3.13 The RTS service is required to mitigate the development of the Tendring Colchester Garden Community and the applicant for the development will be required to submit a Public Transport Strategy. Any required operating subsidy needed for the service will need to be agreed and include appropriate S106 contributions from the developers phased over time. Other developments of scale and with transport impacts, close to or benefitting from the RTS service may also be required to provide proportionate financial support for a service subsidy under future planning agreements. As the development application moves forward, ECC will work with the developer and other partners to ensure that the RTS service proposals being brought forward are sustainable, are of sufficient quality and ambition and reflect the objectives of the Garden Community.

3.14 Section C is to be constructed largely within the Highway Boundary and no permanent land acquisition is required however certain land permissions are required for the delivery of the works being:

- one right of access/easement is required with a third-party private landowner for a UK Power Network utility diversion of cables to connect in with an existing overhead pole with the highway east of Salary Brook Bridge;
- a temporary works license will be required with the same third-party landowner to facilitate directional drilling under the carriageway. It is anticipated that the works will take a fortnight and will be backfilled with no ongoing requirement for access; and
- an easement will be required with Colchester City Council for access to the overhead pole which is in the Salary Brook nature reserve.

3.15 Cabinet took a decision on 18 July 2023 to approve the procurement of a construction contract for Section C (FP/142/06/23) from the Pagabo Public Sector Framework using the tender evaluation criteria of a 50/50 Price/Quality split with 10% of the quality score assessing Social Value and 5% of the quality score assessing carbon impact. The budget envelope for the scheme was calculated based on a Pre-Tender Estimate which was prepared by Jacobs on behalf of the Council.

3.16 The Section C contract has been procured using the Pagabo Civils and Infrastructure 2022 Framework, Lot 2: Road Transport using the evaluation criteria referred to above.

3.17 Out of an initial pool of 3 contractors, only one bid was submitted. One contractor went into administration after the tender was published and a second contractor declined to submit a tender which was only communicated 24 hours prior to the tender closing. The single tender from Milestone Infrastructure Limited received has been reviewed and evaluated. The form of contract is an NEC4 Option A Contract. ECC will again ensure that the contractor is fully aware of their responsibilities in minimising disruption to residents and businesses as far as is possible to do so.

3.18 ECC is committed to deliver the final section of the RTS and therefore it is recommended that the contract for the Section C works is awarded so that work can progress. This decision will ensure we are able to secure the contract for delivery of Section C of the RTS at the tendered price. Not awarding the RTS Section C Contract at this time would mean that the Section C works would not be delivered within the overall HIF funding deadline of 31 March 2026. The current target date for delivery of Section C, if this contract is entered into, is August 2025 (15 months in construction) with the contract also providing for 60 months of landscaping and aftercare after this date.

3.19 The milestone date for the practical completion of Section C in the GFA is 31 October 2025. There is no concern at this time that the construction works cannot be completed by this date.

4 Links to our Strategic Ambitions

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

- Develop our County sustainably
- 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:

- Carbon baseline emissions of the Scheme were not calculated for this project when it was designed and therefore quantitative carbon reporting is not possible. The overall RTS offer road users viable alternatives to private car travel, thus improving the efficiency of traffic flows, and reducing the number of vehicles on the wider road network by providing a practical alternative to car travel which will encourage residents to use the Rapid Transit System now and in the future as the Garden Community is developed. The planting of trees will assist in improving air quality and the design of the cycle and footway will also support sustainable travel encouraging people to walk or cycle where possible. Walking, cycling, and public transport are recognised as emitting lower levels of carbon. Emissions from public transport can be improved further through engine specifications for the vehicles using the RTS routes.

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

Everyone’s Essex commitment	How this is delivered by the A1331 Link Road (phase 1)	How this is delivered by the RTS
Everyone’s Economy <input type="checkbox"/> Infrastructure <input type="checkbox"/> Future Growth and Investment <input type="checkbox"/> Levelling up	The Link Road will provide high quality infrastructure to support the current communities and TCBGC. It will ease congestion in the wider area network in Colchester and allowing communities more opportunity to access employment and education.	The RTS gives greater priority to walking, cycling and public transport supporting communities now and in the future as the Garden Communities are built.
Everyone’s Environment <input type="checkbox"/> Net-zero <input type="checkbox"/> Transport and Built Environment <input type="checkbox"/> Green Communities	The Link Road supports ECC environmental ambitions by ensuring there is suitable factors incorporated to offset the carbon emissions due to the utilisation of the road. This includes the number of trees being planted to replace those lost as part of the building	The RTS supports ECC’s ambitions to be net zero by encouraging active and sustainable transport in the new communities and in the existing community. This is supported by the

	works where the number of trees will increase by over 20%. It will support the future TCBGC.	principle to give priority to measures to reduce the need to travel, promote walking, cycling and public transport where appropriate. The number of trees planted to replace those lost as part of the building work increases the number of trees by over 20% which supports carbon reduction.
Everyone's Health <input type="checkbox"/> Healthy Lifestyles <input type="checkbox"/> Promoting Independence	Healthy Lifestyles are supported by the proposal of a segregated cycle and footway along the Link Road with connections/routes throughout and beyond TCBGC. Part of TCBGC is committed to the delivery of affordable and specialist housing allowing adults the opportunity to live in decent homes and independently.	Healthy Lifestyles are supported by the principle to give priority and promote walking, cycling and public transport where appropriate.
Service Excellence <input type="checkbox"/> Collaborating with Partners	The Link Road has been developed in partnership with Colchester City Council and Tendring District Council who are partners in the development of this project as the local planning authority.	The RTS has been developed in partnership with Colchester City Council who are partners in the development of this project as the local planning authority.
Equalities and Levelling Up <input type="checkbox"/> It is a shared endeavour <input type="checkbox"/> It builds sustainable change	The Link Road supports economic and housing growth in Colchester so there would be a reduction of traffic flow on the current network and supporting the new housing infrastructure.	The RTS supports economic and housing growth in Colchester to ensure that existing residents have improved connectivity to employment by means of sustainable active travel.

5 Options

5.1 Option 1 – Agree to award the construction contract

If the recommendation is agreed, it would allow the commencement of works to construct Section C of the RTS. This is the final section of the RTS that ECC is required to deliver, which is yet to commence work.

Awarding the contract now will allow the scheme to be built within the overall HIF funding deadline of 31 March 2026.

5.2 Option 2 – Do not award the construction contract

Not awarding the construction contract would mean that the Section C works would not commence in the 2024/25 financial year and any future contract would

need a new procurement process. This could lead to cost implications due to inflation as well as meaning that Section C may not be fully completed within the HIF funding deadline of 31 March 2026. ECC would therefore be liable for expenditure incurred but not claimed beyond this date in addition to needing to fund the remainder of the works if a further extension of time cannot be agreed.

6 Issues for consideration

6.1 Financial implications

6.1.1 The HIF Funding Agreement allocates £99.9m of HIF funding for the Colchester RTS and A133-A120 Link Road Projects. In addition, ECC is in receipt of £2m of S106 developer contributions that will contribute towards funding of Colchester RTS.

6.1.2 The HIF funding must be utilised by March 2026. Any expenditure that falls outside this funding time period will fall to ECC to fund if a further extension of time cannot be agreed. There is no budget set aside to support this should this scenario arise.

6.1.3 The current forecast and financing of both schemes as profiled within the Capital Programme is set out in the Confidential Appendix.

6.1.4 As set out in the Confidential Appendix, the forecast cost for Colchester RTS included an estimate for the Section C construction cost. As ECC are now at the point of contract award, as per the recommendations in this report, the expected cost for Section C is no longer an estimate. It should be noted that the cost of Section C is £1.6m higher than original budget envelope for Section C.

6.1.5 The need for increased budget envelope is not a financial concern as set out in Confidential Appendix, contingency held on A133-A120 Link Road project is separate from contingency allocations for each project and each are supported by quantitative risk assessments. As part of the recommendations of this report, a small portion of this separate contingency pot is requested to be moved between the two schemes in order that the contract award is fully funded.

6.1.6 The requested updated profile as per recommendation 2.3 that takes into account paragraph 6.1.4 is set out in the Confidential Appendix.

6.1.7 It should be noted that utilising contingency at any point within the scheme will mean that these funds are no longer available for use should further, currently unquantified, risks arise.

6.2 Revenue Implications

6.2.1 There are revenue costs associated with both the maintenance of the asset once it is brought into use and further the operational strategy of the RTS as a mode of transport between the garden community and surrounding areas.

6.2.2 In terms of the overall operational strategy, ECC are currently determining how the asset will function. Due to a number of different agreements required to be in place before negotiations with developers can proceed – clarity is not expected for a further 12 months. There is however likely to be revenue support sought as a contribution from the developer.

6.2.3 There is on-going modelling of the patronage, income, and cost base of the scheme over an extended period – inclusive of inflationary adjustment. This is being supported by external expertise. This is expected to inform future negotiations.

6.2.4 If there is a time delay between the completion of the RTS and negotiations concluding; then the RTS is expected to run current services provided and nothing more within that time period in order to ensure there is no additional revenue burden to ECC.

6.2.5 If this should happen then, at present, the ECC revenue implication would be only that of maintenance of the asset.

6.3 Financial Risks

6.3.1 ECC is required to continue to fund Colchester RTS projects beyond 31 March 2026. There is a risk that any delays to the project programme resulting in the completion date exceeding 31 March 2026 would increase ECC's financial liability as ECC would be responsible in full for these costs under the conditions of the Funding Agreement if a further extension cannot be agreed. The financial implications of this risk would be dependent on the magnitude of Programme slippage and therefore not currently known.

6.3.2 There is risk of cost escalation that could increase the total project cost of Colchester RTS above that currently estimated. Inflation is an ongoing concern with respect to all major infrastructure projects and no separate risk allocations for inflation have been accounted for within the above cost estimate. Under the funding agreement between Homes England and ECC, the responsibility of cost overruns falls to ECC.

6.3.3 Under the revised GFA with Homes England, phase 1 of the A133-A120 Link Road and Colchester RTS will continue to be intrinsically linked, there is a risk that any changes to programme, delivery and or cost on one could have a direct impact on the delivery, cost, and funding of the other.

6.3.4 There is a risk that ECC is unable to drawdown HIF funds in a timely manner to cover expenditure incurred due to the requirement to satisfy a number of grant conditions. ECC are working with Homes England to close these conditions out as quickly as possible.

6.4 Legal implications

6.4.1 The GFA makes ECC responsible for cost overruns and if ECC does not meet performance milestones in the GFA then Homes England is entitled to cease to

pay any further funding. Since ECC is claiming in arrears, this could leave ECC in the position of having spent significant sums of money which it is unable to reclaim as well as being contractually committed to deliver the remainder of the scheme without being able to claim any further funding if there is an event of default. These legal risks were clearly set out in the report to the Cabinet before the GFA was signed and the risks remain the same.

6.4.2 There are a number of conditions precedent to any claim for funding set out in the GFA that ECC needs to comply with before funding is received from Homes England. This includes the provisions of Certificates of Title. It is important that this work is commissioned quickly in order to unlock claims for funding. These will be required even where the works are taking place on existing highway.

6.4.3 Under the terms of the GFA, the Council is obliged to hit certain milestones in order to be able to claim HIF funding. The GFA provides that the Infrastructure Start on Site date for Section C is 19 March 2024, and the Infrastructure Works Practical Completion Date for Section C is 29 August 2025. Homes England have however agreed, in a waiver letter dated 19 April 2024, to an extension such that the Section C contract must be entered into by 1 May 2024, the works must commence on site by 25 May 2024 and practical completion must be achieved by 31 October 2025.

6.4.4 A failure to meet the milestone dates for Section C will result in ECC being in default (and therefore unable to claim funding) unless Homes England agree to a revised milestone date.

6.4.5 It is important to ensure that the Council is not committed to pay under the construction contract until the land issues are finalised and ECC has the right to enter any third-party land needed to carry out the works.

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, 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.

8 List of Appendices

8.1 Appendix 1 - Confidential Appendix

8.2 Appendix 2 – Equalities Comprehensive Impact Assessment

9 List of Background papers

None

I approve the above recommendations set out above for the reasons set out in the report.	Date
Councillor Kevin Bentley, Leader of the Council	25.04.24

In consultation with:

Role	Date
Councillor Christopher Whitbread, Chancellor of Essex	26.04.2024
Councillor Tom Cunningham, Cabinet Member for Highways, Infrastructure and Sustainable Transport	26.04.2024
Executive Director, Corporate Services (S151 Officer) Nicole Wood	22.04.24
Director, Legal and Assurance (Monitoring Officer) Katie Bray on behalf of Paul Turner	22.04.24