Report to Accountability Board	Forward Plan reference number: FP/AB/146
Date of Accountability Board Meeting:	16th November 2018
Date of report:	5th November 2018
Title of report: A28 Chart Road – Update	
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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This report has a confidential appendix which is not for publication as it includes exempt information falling within paragraph 3 of Part 1 of Schedule 12A of the Local Government Act 1972, as amended.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. Purpose of report

1.1. The purpose of this report is to make the Accountability Board (the Board) aware of the latest progress and issues relating to the delivery of the A28 Chart Road project (the Project).

1.2. The report provides an update on the funding risk for the Project and the options currently under consideration.

2. Recommendations

2.1. The Board is asked to:

2.1.1. **Note** the progress made to date towards the delivery of the Project and the Project funding risk as set out in Section 4 below.

2.1.2. **Note** the requirement by Kent County Council (KCC) for Chilmington Green developers to provide confirmation that their funding contribution to the construction costs of the Project is available as set out in the Confidential Appendix.

2.1.3. **Note** the three potential options which have been identified if the Developer funding is not committed. The SELEP Strategic Board will be provided with a Project update and will be asked to consider the three potential options in advance of a decision by the Accountability Board at its meeting on the 15th February 2019.

3. The A28 Chart Road

3.1. The business case for the Project has been through the Independent Technical Evaluator (ITE) process and received approval from the Board for

the award of £10.2m Local Growth Fund (LGF) on 12th February 2016. The Project was presented as achieving high value for money and medium to high certainty of achieving this.

3.2. The A28 is the main route serving south and west Ashford. The route runs north-south on the western side of the town and connects to the A20/A292 to the north, and ultimately, the strategic highway network via the M20. The Project will serve as an extension to recent improvements introduced to the north of Tank roundabout, connecting with the M20 junction. The Project is linked to the Chilmington Green development with the delivery being dependant on the Road Project. This is stated in the Ashford Borough Council local plan.

3.3. The Project will see the dualling of the existing A28 Chart Road carriageway with two lanes being provided in both directions between Matalan (Brookfield Road) and Tank (Templer Way) roundabouts, separated by a central island. A new bridge over the railway line is proposed to take the southbound carriageway with the existing bridge carrying the northbound carriageway. The existing carriageway between Matalan and Tank is single carriageway with limited capacity.

3.4. The Matalan and Tank junctions will both be enlarged to accommodate increased capacity stemming from the carriageway upgrade. The Loudon Way signalised junction will be retained but will be improved with more efficient signals, new pedestrian and cycle crossing facilities and dedicated right and left turning lanes from Chart Road.

3.5. During peak periods, congestion is a major issue along the A28 and in particular between Matalan and Tank roundabouts. Journey times are unreliable for private car users and public transport operators alike along the corridor. This results in slow moving traffic along the corridor in both directions contributing to higher than normal emissions from vehicles.

3.6. The current highway infrastructure along the A28 is inadequate to deal with existing conditions in Ashford and further development is only going to exacerbate problems further.

3.7. The proposed Chilimington Green development is located approximately 6km to the south west of Ashford town centre and lies to the east of the A28 corridor. A planning condition has been imposed by KCC that the A28 will require upgrading in order to carry the expected level of demand attributable to the Chilmington Green development. The development will comprise:

- Up to 5,750 dwellings;
- Up to 10000 sqm of B1 use class;
- Up to 9000 sqm of A1-A5 use classes;
- Three primary schools for up to 1200 pupils; and
- A site for a Secondary School for up to 1080 pupils.

3.8. In addition to Chilimington Green, a number of other proposed developments are expected to go ahead in the town over the coming years which are predicted to deliver between 3,200 and 6,000 homes by 2030. It should be noted that these figures are for the town of Ashford alone and do not consider the likely development in the surrounding area that could affect Ashford and its highway infrastructure.

3.9. The approved business case for the Project presented the following objectives:

- Provide additional capacity on the road network to improve traffic flow
- Alleviate congestion along the A28 Chart Road
- Improve journey time reliability along the A28 Chart Road.
- Improve road safety along the A28 Chart Road.
- Reduce environmental impacts for local residents.
- Support the economy by supporting the delivery of houses and jobs.

4. Project funding contributions

4.1. To supplement the £10.2m LGF contribution to the Project, the Chilmington Green developer (the Developer) have contributed £1.41m towards the development of the Project and are funding the remaining construction costs of the project. This funding is committed through a Section 106 agreement, for the Developer to mitigate the impact of the planned development at Chilmington Green. The detailed funding breakdown is provided as a confidential appendix, as the total cost of the Project is subject to ongoing land negotiations.

4.2. To date, a total of £2.756m LGF has been spent on the Project. In addition the £1.41m developer contribution to the Project development work has been received by KCC, which has been spent in full.

4.3. The agreed funding arrangement with the Developer is that KCC forward fund their contribution to the Project which is then paid back to KCC by the Developer over a ten-year period.

4.4. To safeguard KCC of any risk of non-payment and to recover interest charges, the agreement included a provision for the Developer to provide a security bond (the Bond) prior to awarding the construction contract.

4.5. The 6-week security bond notice was issued to the Developer on 14 December 2017, requiring the bond to be provided by 26 January 2018. Although a bond hadn’t been provided, positive discussions were ongoing with the Developer, Ashford Borough Council and Homes England leading to a decision to start the vegetation clearance works on 15th February 2018.

4.6. The vegetation clearance works were required to commence in February prior to the start of the bird nesting season. However, when it was clear there

were issues with the provision of the Bond the vegetation clearance was suspended and finally stopped when the decision was made to defer the Project from commencing in 2018.

4.7. A clause is included within the Section 106 agreement, restricting the Developer from occupying more than 400 dwellings until the Bond is provided. The Developer has started the foundations for the first 70 units and their most recent build-out trajectory predicts that the 400 occupations would not be reached until 2022/23.

4.8. KCC is unable to progress with the Project and award the construction contract until the Bond is provided by the Developer, which will delay the delivery of the Project. The contractor has completed the Stage 1 Early Contractor Involvement (ECI) Contract and is currently on standby awaiting a decision from KCC as to whether the funding is available to continue with the award of the Stage 2 construction contract.

4.9. KCC, Ashford Borough Council and Homes England have met recently with the Developer to discuss both the S106 conditions and the Bond for the Project. All parties agreed that it would be disappointing to lose the LGF funding as inevitably it will impact on viability and affordable housing may well be the long-term loser. As a result, the Developer has expressed a desire to make an upfront payment to KCC to cover the liability of delivering the Project, but a funding commitment has not yet been provided.

5. Option under consideration

5.1. KCC are currently considering a delivery option where the Developer provides an upfront payment to KCC to cover their funding contribution. KCC will then be able to re-mobilise their contractor to commence construction of the Project during 2019. This option is anticipated to extend the delivery programme, but would still enable the full Project to be delivered by March 2021.

5.2. A letter has been sent by KCC to the Developer requesting this upfront payment and for this payment to be confirmed by 2nd November 2018. However, at the time of writing this report, KCC had not received the funding commitment from the Developer.

5.3. KCC have continued to complete the required land acquisitions and remaining design work. As it stands KCC's Contractor is still in place to deliver the Project, however, the current ECI contract will need to be closed imminently to avoid further potential costs if a bond or an upfront payment is not provided by the Developer. Should a decision on delivery be deferred beyond 31st December 2018, then it is likely that KCC will need to re-procure a new contractor.

6 SELEP Secretariat Comments

6.1 This Project is clearly a strategic priority for KCC and SELEP due to the substantial scale of housing delivery which will be unlocked by the Project. However, currently the Developer is not meeting their Section 278 obligation to provide their funding contribution to the Project until the Section106 agreement trigger is reached for the occupation of 400 homes. As this is not expected until 2022/23, this would substantially delay the LGF spend beyond the Growth Deal period.

6.2 The current message from Government reaffirms the requirement for LGF to be spent in full before the end of the Growth Deal period, therefore there is a high risk to the deliverability of this Project.

6.3 During the Board meeting on the 14th November 2018, a verbal update will be sought from KCC on the latest position in relation to the discussions with the Developer. If a positive response is not received from the Developer and the Project cannot progress to enable the delivery of the Project by the end of the Growth Deal period, then the current LGF allocation to the Project may need to be re-allocated.

6.4 The following three potential options have been identified for consideration if the Developer does not provide the Bond or upfront payment. It is intended that a Project update and the various options will be presented to the SELEP Strategic Board for their consideration on the 7th December 2018 in advance of a decision being sought from the Accountability Board in February 2019.

6.5 **Option 1** – Cancellation of the Project from the LGF programme due to being undeliverable within the Growth Deal period. The impact of this option would be:

+ This would enable the £10.2m allocated LGF to be re-allocated to a Project which can demonstrate deliverability within the Growth Deal period and greater certainty of benefit realisation.

- The £2.756m LGF spend on the Project to date may become an abortive cost if the LGF spend to date is no longer accounted for by KCC as a capital cost. If the project spend to date became a revenue cost then the LGF capital funding would need to be repaid to SELEP.

- The delivery of the Project will be delayed and the considerable scale of benefits associated with the delivery of the Project would be delayed or not be realised.

6.6 **Option 2** – The Project is put on hold but the LGF remains allocated to the Project. The impact of this option would be:

+ There are no abortive costs to be repaid to SELEP, if the Project is able to proceed at a future date.

- The LGF would remain unspent within the Growth Deal period. This goes against Government's expectation that all LGF must be spent by the end of the Growth Deal project; 31st March 2021.

6.7 **Option 3** – The Project is put on hold and the LGF is reallocated through the LGF3b process, but the Project is prioritised for future funding opportunities, such as the Shared Prosperity Fund. The impact of this option would be:

+ The hold of the Project would prevent abortive Project costs needing to be repaid to SELEP

+ The re-allocation of the LGF through the LGF3b to new pipeline Projects would ensure that the LGF is spent within the Growth Deal period, to meet the requirements from Central Government and drive the realisation of benefits

- The requirements for future funding opportunities are currently unclear and as such, there is no certainty that the Project would secure future funding, such as the funding though the Shared Prosperity Fund.

6.8 In advance of these options being discussed with the SELEP Strategic Board, a view will be sought from Central Government. In particular, SELEP will seek to understand the likely implications of the Board agreeing Option 2, which would risk extending the LGF spend beyond 31st March 2021, given the strong message from Government that all LGF must be spent within the Growth Deal period.

6.9 Furthermore, discussions will also be held with KCC and Central Government to agree the maximum timescale over which the Project can be held before the capital expenditure on the Project becomes an abortive cost.

7 Financial Implications (Accountable Body comments)

7.1 The impact of further delay in the delivery of this Project means that there is a risk of spend of the LGF outside of the Growth Deal period. Government assess delivery of the Growth Deal through the Annual Conversation meetings, following which the annual LGF allocations are confirmed.

7.2 Currently SELEP is able to amend its Growth Deal in line with the Assurance Framework, without seeking approval for such change with Government, however, lack of delivery may impact on this flexibility and also potentially on future funding allocations, such as from the Shared Prosperity Fund.

7.3 The impact of this and any other projects incurring delays in delivery should be considered by the Strategic Board, and, if appropriate, options agreed to assure maximum value is achieved from the Local Growth Fund within the Growth Deal period.

7.4 Any proposed changes will need to meet the requirements of the SELEP Assurance framework.

8 Legal Implications (Accountable Body comments)

8.1 There are no legal implications arising from this report.

9 Staffing and other resource implications (Accountable Body comments)

9.1 None at present.

10 Equality and Diversity implications

10.1 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:

(a) Eliminate unlawful discrimination, harassment and victimisation and other behaviour prohibited by the Act

(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.

10.2 The protected characteristics are age, disability, gender reassignment, pregnancy and maternity, race, religion or belief, gender and sexual orientation.

10.3 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 were possible identify mitigating factors where an impact against any of the protected characteristics has been identified.

11 Appendices

11.1 Appendix 1 – Funding breakdown (confidential)

Role	Date
Accountable Body sign off Stephanie Mitchener (On behalf of Margaret Lee)	 8/11/18