

<b>Report title:</b> Drawdown from Transformation Reserve: Supporting the creation of a pan-Essex Development Viability Resource	
<b>Report to:</b> Cllr Christopher Whitbread, Cabinet Member for Finance	
<b>Report author:</b> Steve Evison, Director of Economic Growth & Localities	
<b>Date:</b> 22 April 2020	<b>For:</b> Decision
<b>Enquiries to:</b> Alethea Evans, Lead for Strategic Development <a href="mailto:alethea.evans@essex.gov.uk">alethea.evans@essex.gov.uk</a> and Graham Thomas, Head of Planning <a href="mailto:graham.thomas@essex.gov.uk">graham.thomas@essex.gov.uk</a>	
<b>County Divisions affected:</b> All divisions	

## **1. Purpose of report**

- 1.1 To develop a project to fund a bespoke development viability team to review developer funded planning infrastructure contributions for the benefit of ECC and local district and borough councils.

## **2. Recommendations**

- 2.1 Agree to the drawdown of £300,000 from the Transformation Reserve (over the period 2020/2021-2022/23) for the purposes of funding a development viability team.

## **3. Summary of issue**

- 3.1 ECC propose to recruit a team of 3 officers to provide a dedicated development viability team to work with ECC and local District and Borough Councils to review planning infrastructure contributions and developer viability assessments.
- 3.2 Developer contributions for infrastructure have to meet statutory tests. Such planning obligations must be: (1) necessary to make the development acceptable in planning terms; (2) directly related to the development; and (3) fairly and reasonably related in scale and kind to the development. With many of the Local Plans not yet adopted, it is considered that, with additional resources and help, a number of local authorities would be able to better review and challenge infrastructure contributions and viability assessments.
- 3.3 The skilled negotiation and support provided by this project will enable appropriate planning obligations to be inserted and detailed reviews of viability assessments submitted in response. Viability assessments are often very complex and time consuming and cannot be carried out very easily without dedicated resource.
- 3.4 Several councils currently make use of an external providers to carry out this service which is provided by specialist consultancies and the District Valuer. But these services do not go far enough in challenging assumptions or the method of assessment often resulting in low contributions being agreed between the developer, ECC and the district council. Engagement with district colleagues and planning portfolio holders has identified a demand for a robust pan-Essex viability scrutiny resource which allows district officers to work alongside a new

development viability team to challenge assumptions and the methodologies used by developers to ensure that appropriate planning obligations are negotiated.

- 3.5 County Councils are responsible for the delivery of key strategic infrastructure. Implementing this capability will put ECC in a much stronger position to secure appropriate funding for highways and transportation, education, health and social care and affordable housing. Public sector expertise is needed to ensure a consistent approach across Essex to secure the right level of contributions. A pan-Essex public sector focused presence in the negotiation phase will ensure that the expected contributions from developments are achieved.
- 3.6 Currently the cost of specialist viability advice procured to support ECC and district councils is recharged to developers. This approach will be mirrored by this new team, although as a new approach there will be a bedding in phase over the first 12-18 months where workloads, relationships and appropriate charges will need to be established.
- 3.7 The Project will consist of the following elements:
- a. Appointing to viability officer posts;
  - b. Work with ECC Planning Service to understand specific developments which may need a focus and other ECC services who may benefit from support in securing increased S106 contributions;
  - c. Work with district councils to identify current development proposals which would benefit from viability checks and challenge reviews;
  - d. Analyse viability assessments and/or development proposals to determine whether a higher S106 contribution can/should be sought and support the determining authority to negotiate where necessary.
  - e. Undertake monitoring of service and outcomes – to be reported every 6 months. This analysis will be utilised to establish charges (to developers) for the viability negotiating service and the viability of the service generally.
- 3.8 The project will consist of appointing to up to three fixed term contract viability officer posts, or equivalent, which will be hosted by ECC's Planning Service and will provide the additional skills and expert knowledge required to challenge viability assessments within Essex District/Boroughs.
- 3.9 Encouraging and enabling the implementation of a pan-Essex Development Viability resource across Essex aligns with this Council's strategic priorities to:
- transform the Council to achieve more with less;
  - enable inclusive economic growth;
  - help people get the best start and age well; and
  - help create great places to grow up, live and work.
- 3.10 Discussions between ECC and several district councils have already taken place through a combination of the Essex Planning Officers Association (EPOA) and Planning Portfolio Holders, and through direct engagement. The discussions demonstrate an appetite for the development of a pan-Essex viability resource but the preparation process could be slowed by the availability of skilled resources and finances.

## **4. Options**

- 4.1 Option 1 - Do Nothing

Without additional resources funded by the drawdown, it is likely that ECC would be unable to impose appropriate planning obligations and negotiate and secure the correct amount of s106 infrastructure contributions. Most District Councils and ECC have no specialist viability resource and therefore have no ability to check and challenge submitted viability assessments.

The current operating environment would prevail, and with more appeal led development coming forward, appropriate planning obligations will not be in place to mitigate the impact of development and benefit local communities and support the provision of local infrastructure.

#### 4.2 Option 2 - Draw down from the Transformation Reserve – Recommended Option

Draw down up to £300,000 to form a Development Viability team to work with local authorities across Essex to impose the right planning obligations and provide the capacity and skills to negotiate with developers and secure the correct amount of s106 infrastructure contributions for new developments.

### 5. Issues for consideration

#### Financial implications

5.1 The development of a pan-Essex Development Viability resource allows for the possibility of increased developer contribution through skilled s106 negotiation and the enhanced capability of the public sector to undertake due diligence on viability assessments put forward by developers and robustly challenge.

5.2 This is a spend to save proposition, which it is forecast will provide at least a threefold return in contributions for ECC through increased capital contributions. Investment in the creation of a pan-Essex Development Viability team (3 FTE) will aim to increase contributions within the permitted allowances of the s106 process. This would have a long-term impact in reducing the financial burden on taxpayers and enhance community facilities. If successful, the project could continue beyond the 3-year start-up on a self-financing basis.

5.3 Costs set out below include the total employment costs, including recruitment, salary and on costs, based on a Principal Planner role. It is assumed that two FTE will be recruited from November 2020, with an additional FTE recruited from November 2021. The table below shows the costs for the first two years, assuming this is successful the team would become permanent at a cost of £189,000 per annum.

Pan-Essex Development Viability Team (2FTE from 1 November 2020, 3 FTE from 1 November 2021)	2020/21 (5 months)	2021/22 (12 months)	2022/23 (7 months)	Total (2 years)
Staff Costs (Salary, NI, Pension)	£ 52,500	£ 152,250	£ 78,750	£ 283,500
Recruitment Costs (as 6% of Salary)	£ 6,000	£ 3,000		£ 9,000
<b>Staffing Costs Over 2 Years</b>	<b>£ 58,500</b>	<b>£ 155,250</b>	<b>£ 78,750</b>	<b>£ 292,500</b>

5.5. It is proposed that funding is drawn down from the Transformation Reserve, £58,500 in 2020/21, £155,250 in 2021/22 and £78,750 in 2022/23.

5.6. Evidence from recent S106 agreements shows that the developer contributions to infrastructure that are secured through S106 agreements are on average 8.5% below the amount requested. The table below shows the potential impact on the

Medium Term Resource Strategy (MTRS) based on the assumption that the pan Essex Viability Resource can reduce this gap by 50% and the contributions are used to pay-back short-term borrowing.

- 5.7. There are also planning appeal situations where development is granted through the appeal process and this is understood to provide one of the most challenging areas for local authorities where S106 infrastructure is generally not secured at the right level. It is very difficult to quantify the added value of achieving an uplift in S106 funding although the assumption is that this would bring an additional financial benefit beyond those set out in the table below.

	£'000	£'000	£'000	£'000	£'000	£'000	£'000	£'000	£'000	£'000	£'000
	10 Year Total	2021/22	2022/23	2023/24	2024/25	2025/26	2026/27	2027/28	2028/29	2029/30	2030/31
<b>Capital Funding</b>											
Developer Contributions	5,343	-	175	908	796	718	604	532	595	524	491
<b>Total Capital Funding</b>	<b>5,343</b>	<b>0</b>	<b>175</b>	<b>908</b>	<b>796</b>	<b>718</b>	<b>604</b>	<b>532</b>	<b>595</b>	<b>524</b>	<b>491</b>
<b>Revenue Costs</b>											
Net Staff Costs	1,442	161	189	137	137	137	137	137	137	137	137
<b>Total Revenue Costs</b>	<b>1,442</b>	<b>161</b>	<b>189</b>	<b>137</b>	<b>137</b>	<b>137</b>	<b>137</b>	<b>137</b>	<b>137</b>	<b>137</b>	<b>137</b>
<b>Impact on Borrowing Costs</b>											
Interest	(754)	-	(3)	(19)	(45)	(69)	(89)	(107)	(124)	(141)	(157)
MRP	(554)	-	-	(6)	(37)	(64)	(89)	(104)	(91)	(85)	(78)
<b>Total Impact on Borrowing Costs</b>	<b>(1,308)</b>	<b>-</b>	<b>(3)</b>	<b>(25)</b>	<b>(82)</b>	<b>(133)</b>	<b>(178)</b>	<b>(211)</b>	<b>(215)</b>	<b>(226)</b>	<b>(235)</b>
<b>Total Revenue Impact</b>	<b>134</b>	<b>186</b>	<b>112</b>	<b>55</b>	<b>4</b>	<b>(42)</b>	<b>(75)</b>	<b>(79)</b>	<b>(90)</b>	<b>(99)</b>	

- 5.8. The ongoing cost of the team will be £189,000 per annum, it is expected that the impact of the team will start to deliver an increase in developer contributions after 21 months. Within the first year, the team would also start to recharge their work to developers in conjunction with the district councils, thereby reducing the net cost to ECC. After five years, the net cost of the team could be funded from the reduction in borrowing costs as a result of additional capital contributions from developers. If insufficient additional capital receipts are generated by the team, or the recharge mechanism does not achieve a cost benefit to ECC, it will be scaled back or decommissioned, so that there is no further financial burden on ECC.

- 5.9 There is a risk that additional contributions to ECC are not achieved through the work of the team established through this investment. Regular monitoring of S106 agreements takes place as standard and would continue to gauge the effectiveness of the investment. If contribution requests are identified as too high and cannot be achieved through negotiations, consideration will be given to review the ECC Developer Contribution Guide.

## Legal implications

- 5.10 The draw down of money from reserves does not authorise any expenditure that is a key decision or any significant changes to the Council's services or funding which must be authorised by the relevant Cabinet Member.

## 6 Equality and Diversity implications

- 6.9 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.

6.10 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).

6.11 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.

## **7. List of appendices**

7.1 EqlA

## **8. List of Background papers**

None

<b>I approve the above recommendations set out above for the reasons set out in the report.</b>	<b>Date</b> 10/07/20
<b>Councillor Chris Whitbread Cabinet Member for Finance</b>	

**In consultation with:**

<b>Role</b>	<b>Date</b>
<b>Councillor Tony Ball – Cabinet Member for Economic Development</b>	10/07/20
<b>Steve Evison, Director of Economic Growth &amp; Localities</b>	
<b>Signed off by Graham Thomas Head of Planning &amp; Development</b>	25/02/2020
<b>Executive Director, Finance and Technology</b>	
<b>Stephanie Mitchener on behalf of Nicole Wood</b>	25/06/2020
<b>Director, Legal and Assurance (Monitoring Officer)</b>	
<b>Katie Bray, on behalf of Paul Turner</b>	16/06/2020