

Forward Plan reference number: FP/AB/315

Report title: A28 Sturry Link Road Project Update	
Report to Accountability Board on 20 November 2020	
Report author: Rhiannon Mort, SELEP Capital Programme Manager	
Date: 30/10/2020	For: Decision
Enquiries to: Rhiannon Mort, Rhiannon.mort@southeastlep.com	
SELEP Partner Authority affected: Kent	

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This report has a confidential appendix which is not for publication as it includes exempt information falling within paragraph 3 of Part 1 of Schedule 12A of the Local Government Act 1972, as amended.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 for the Accountability Board (the Board) to receive an update on the delivery of the A28 Sturry Link Road project (the Project), Canterbury, Kent.
- 1.2 At the time of writing this report, the planning consent for the development due to financially contribute to the Project has not yet been approved, but the application is due to be determined by the date of the meeting.
- 1.3 A verbal update will be provided at the meeting to inform the decision making of the Board in respect of whether the unspent proportion of the LGF allocation should remain allocated to the Project or be reallocated to an alternative project on the LGF pipeline.

2. Recommendations

- 2.1 The Board is asked to agree one of two options, depending on the outcome of the request for planning consent due to be considered by Canterbury City Council on 17th November 2020:

Option 1: If planning is approved

- 2.1.1 **Note** that planning consent has been secured for the Broad Oak Farm and Sturry developments; and
- 2.1.2 **Agree** to extend the deadline for planning consent to be secured for the Project itself to the end of the calendar year (31 December 2020). If the planning consent is not secured by this date, the remaining £4.791m LGF will be automatically reallocated from the Project to the next scheme on the LGF pipeline.

Under option 1, KCC will still be required to provide written confirmation that the funding package is in place by 12 February 2021 to enable the remaining £4.791m LGF to be transferred by the end of 2020/21, as set out in section 8.3.

Option 2: If planning is not approved

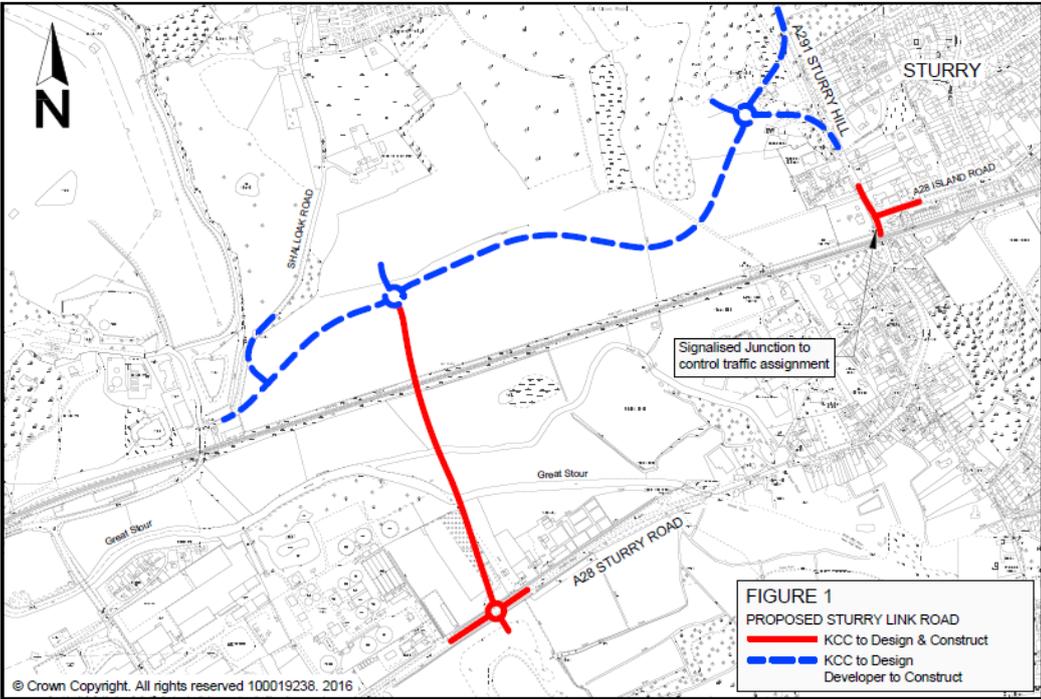
2.1.3 **Agree** the reallocation of £4.791m unspent LGF to the next project on the LGF pipeline, in accordance with the decision made by the Board in February 2020; and

2.1.4 **Agree** that there is compelling justification for SELEP Accountable Body not to recover the £1.109m LGF spent on the Project to date, provided it can continue to meet the LGF grant conditions for Capital expenditure.

3. A28 Sturry Link Road (the Project)

3.1 The Project is for the delivery of the new link road between the A291 and A28, to the south west of Sturry, Canterbury, Kent. The LGF is due to contribute to the cost of constructing a bridge over a railway line and the Great Stour River, to enable traffic to avoid the Sturry level crossing and the congested road network in the area. The sections shown in red in Figure 1 below show the sections of road included as part of the scope of the LGF Project.

Figure 1 - A28 Sturry Link Road



4. Background

A28 Sturry Link Road Update Report

- 4.1 The Project was approved in June 2016 for the award of £5.9m LGF but is identified as a high-risk project, due to the risk to the private sector funding contributions to the Project.
- 4.2 As a result of the project risks, the Board has received individual update reports on the Project since June 2019 and deadlines have been set on a number of occasions for planning consent to be secured for the Project itself and for the residential developments for the main sites due to financially contribute to the Project.
- 4.3 Due to the exceptional circumstances which have arisen, as a result of COVID-19, the Board agreed to award flexibility to enable the planning consent to be considered at the next opportunity once planning committee meetings resume and by no later than 18 September 2020. However, the Project has been unable to meet this revised deadline due to emerging issues relating to the planning consents, as set out in section 5.
- 4.4 In this report, the Board is asked to consider whether further flexibility should be awarded or if the unspent LGF should be reallocated to the next project on the LGF pipeline.

5. Project Cost and Funding

- 5.1 To date, of the £5.9m LGF award, £1.109m LGF has been spent by Kent County Council (KCC) on the delivery of the Project. In addition to the £5.9m LGF award to the Project, three developer funding contributions are expected to be made to fund the remaining project cost. These developer contributions are being made by three different developers from sites in the vicinity of the Project, as detailed within the confidential appendix. Appendix A also clarifies the current status in relation to each contribution including where agreements are subject to planning dependencies.

Table 1 – Project spend profile (£m)

Funding source	Expenditure Forecast (£m)								Total
	Prior to 2018	18/19	19/20	20/21	21/22	22/23	23/24	24/25 and onwards	
LGF	0.785	0.286	0.038	0.600	4.191				5.900
Developer Contribution	0.015		0.275		1.710	6.549	7.051	8.100	23.700
KCC borrowing						5.000	0.5	-5.500	0.000
Total	0.800	0.286	0.313	0.600	5.901	11.549	7.551	2.600	29.600

- 5.2 The delays in the programme and uncertainty caused by the COVID -19 crisis has had an impact on the commencement of development, as a result of the delays in securing planning consent. The impact of COVID-19 could also delay the payment dates for development contributions to be made to the Project. Whilst KCC remain committed to the funding model, set out in

Appendix A, the delayed payment for developer contribution could result in additional forward funding being required by KCC.

- 5.3 No change to the total Project cost has been reported to date as a result of the delays or increased delivery risk related to COVID-19. If such cost increases are identified, the onus will be on the developers to meet these increased costs.

6. Project delivery update

- 6.1 The original Project business case set out the intention to commence site mobilisation work in October 2019 and to complete the Project by October 2021. It is now proposed that the Project will open to traffic in February 2024.
- 6.2 The delivery of the Project has been slower than anticipated due to the interdependency between the Project and the planning applications for the residential/ commercial development which is associated with the Project. Project delays have also been experienced through the development of the environmental impact assessment (EIA), as stakeholder feedback has been considered and used to enhance the Project design work.
- 6.3 The interdependencies between the Project and the housing developments are complex and any resolution by Canterbury City Council to grant planning permission will be subject to the application for the relief road (the Project) being granted by KCC.
- 6.4 The outstanding planning applications, for the housing developments (being decided by Canterbury City Council) and the Project (being decided by KCC), are also subject of a joint Appropriate Assessment (AA) being considered as part of the planning application and being agreed by Natural England.
- 6.5 Positive steps have been made in September 2020 towards agreeing the AA, but previous delays to the AA meant that the planning applications could not be determined in August/September 2020, to achieve the revised deadline previously set by the Board.
- 6.6 Natural England have now accepted the AA produced in support of the planning application for the residential development, although Canterbury City Council have decided to undergo a further round of public consultation. This will enable the planning application for the two main residential developments to be considered by Canterbury City Council on 17 November 2020.
- 6.7 Natural England still need to formally accept the AA prepared for the Project, however, this mirrored the information presented in the AA for the residential development application so should be accepted by Natural England early in November 2020. There are no other foreseen barriers to the determination of the planning application for the Project and associated developments.

- 6.8 As the planning consent for the Project itself is not intended to be considered by Kent County Council until the residential developments have been considered, the next opportunity for the planning application for the Project to be considered is 9th December 2020. If the consideration of the application by Canterbury City Council is delayed, this will further delay the consideration of the Project by KCC Planning Committee.
- 6.9 Based on the latest Project delays, it is now anticipated that construction will start in January 2022, with the completion of the Project by November 2023. The key project milestones are summarised in Table 2 below. This is on the basis that the developer contributions are in place and that the land required to deliver the Project can be acquired voluntarily. Section 7 below provides further details on these Project risks.

Table 2 – Project Milestones

Key Milestones	Updated milestones
Canterbury City Council planning decision for the development	17 November 2020
Kent County Council planning decision on the Project	9 December 2020
Procurement and award of design and build contract	May 2021
Detailed Design	Oct 2021
Land acquisition	November 2021
Construction start	January 2022
Construction complete	November 2023
Open to traffic (including developer portion)	February 2024

- 6.10 Though the LGF would be spent before the other funding sources, on costs such as land acquisition, it is expected that due to the latest delays and the current pause on LGF spend, the full LGF award to the Project will not be spent in full prior to the end of the Growth Deal (30 September 2021; as extended by SELEP Ltd in April 2020).
- 6.11 The conditions which need to be satisfied for LGF spend to be permitted by the Board beyond 30 September 2021 are set out in Appendix B. Three of the five conditions have been met but written confirmation is required from KCC to confirm that the funding sources have been secured to deliver the project and updated endorsement is required from SELEP Ltd for LGF spend beyond 31 March 2021.

7. Project risk

- 7.1 The most significant Project risk is the availability of the private sector funding contributions towards the delivery of the Project. As detailed in Appendix A, potential options have been identified to manage the cash flow position and to secure developer contributions which have been identified towards the delivery of the Project. Although all of the sites are allocated in the adopted

A28 Sturry Link Road Update Report

Local Plan (July 2017), full planning consent has not yet been approved for any of the main three developers due to financially contribute towards the delivery of the Project.

7.2 Given the complex funding package for the Project, there are a large number of dependencies to secure the full local funding package required to deliver the Project. These dependencies include:

7.2.1 Planning consent being secured for the developments which are due to financially contribute to the delivery of the Project;

7.2.2 The pace of housing delivery for the other development sites which are financially contributing towards the delivery of the Project;

Based on the expected pace of housing delivery, the developer contributions will not immediately be available to enable the delivery of the Project as per the current programme.

A forward funding model has been identified to cover any short fall in which KCC will forward fund the developer contributions to the Project, in advance of the developer contributions being paid. As this pace of housing delivery may slow, due to the impact of COVID-19, this will likely further delay the developer contributions to the Project, thereby increasing the duration of the forward funding by KCC.

As a result of the planning delays and therefore the signing of the S106 agreements, the work to consider the viability of the funding model has been delayed. The likely borrowing costs will be costed by KCC over the next few months, to ensure the current funding model remains viable. If the Board agree that the Project should retain its full LGF allocation, the outcome of this assessment will be considered as part of the next update report to the Board in February 2021.

7.2.3 A security bond is being provided to Kent County Council to forward fund Source 1, as set out within the confidential appendix. The provision of a bond has been agreed in principal with the developer.

7.2.4 KCC securing a charge on the land to enable Kent County Council to forward fund Source 2. The provision of a land charge has been agreed in principal with the developer, however, details are still to be provided and agreed.

7.3 As the developers are also delivering the spine road, to connect the bridge with the existing road network to the north east, any delays to the developer's construction of the spine road will impact the opening date for the Project.

7.4 The draft Head of Terms agreement with the developer, who is constructing the spine road, sets out the requirement to deliver the spine road at the same

time as the Project. As full planning consent has not yet been granted to this site, this remains a substantial Project risk. A detailed planning submission has been made for the spine road which will be determined as part of the application for the site in November 2020.

- 7.5 A Compulsory Purchase Order (CPO) inquiry may be required to secure the land to complete the Project. A land agent has been appointed to lead on land negotiations, and the landowners have been consulted during the design phase to enable their initial concerns to be mitigated through design amendments. Once the planning has been confirmed, KCC will be in a better position to progress negotiations, with the intention of acquiring the land through voluntary negotiations.
- 7.6 If a CPO is required this will added to the timescales for delivering the project and risks an increase in LGF spend beyond 30 September 2021. KCC intend to run the CPO in parallel with the negotiations to reduce the impact on the construction programme.

8. Next steps and potential options

- 8.1 LGF spend on the Project has been placed on hold since July 2019, whilst Kent County Council seek to address the project risks.
- 8.2 The main barrier to the Project's ability to proceed relates to planning consents having not been secured for the Project, nor for the main residential developments due to financially contribute. There also remain considerable risks, as Kent County Council are not currently in a position to provide confirmation of the match funding and a CPO may also be required.
- 8.3 The Board has previously agreed that written confirmation must be provided by Kent County Council to SELEP Accountable Body, by 12 February 2021, to confirm the funding package is in place for the Project. This confirmation is required to enable the release of the remaining £4.791m LGF to Kent County Council for the delivery of the Project beyond 31 March 2021.
- 8.4 It is expected that a verbal update will be presented to the Board at the meeting to confirm whether the planning consent has been agreed for the development.
- 8.5 If the planning consent has been confirmed for the Broad Oak Farm and Sturry developments, Option 1 is recommended to the Board:

Option 1

- 8.5.1 **Note** that planning consent has been secured for the Broad Oak Farm and Sturry developments; and
- 8.5.2 **Agree** to extend the deadline for planning consent to be secured for the Project itself to the end of the calendar year. If the planning consent is not secured by this date, the remaining £4.791m LGF will be automatically reallocated to projects on the LGF pipeline.

A28 Sturry Link Road Update Report

- 8.6 If planning consent has not been awarded to the Broad Oak Farm and Sturry developments by the date of the meeting, it is recommended that the Board agree Option 2:

Option 2

- 8.6.1 **Agree** the reallocation of £4.791m unspent LGF to the next project on the LGF pipeline, in accordance with the decision made by the Board in February 2020; and
- 8.6.2 **Agree** that there is compelling justification for SELEP Accountable Body not to recover the £1.109m LGF spent on the Project to date, provided it can continue to meet the LGF grant conditions for Capital expenditure.
- 8.7 At the last meeting of the Board, the Board were advised against awarding further extensions to the deadline for planning consent to be secured beyond the September 2020 extension. For SELEP to remove the hold on LGF project spend and transfer the remaining LGF allocation for the project by the end of 2020/21, SELEP will require firm confirmation that the full funding package is in place to deliver the Project. There remain a number of hurdles to overcome before this assurance can be provided, as set out in section 5.
- 8.8 If the Project is unable to proceed and an alternative project is brought forward, SELEP must be in a position to demonstrate to Government that the funding is contractually committed and can be spent on the new project by the end of 2020/21. Allowing a further extension to the deadline will reduce the amount of time available for an alternative project to be brought forward.
- 8.9 If the remaining £4.791m unspent LGF is withdrawn from the Project (Option 2), it is still expected that the Project will proceed and be funded through development contributions, as the completion of the Project remains essential to the planning residential developments in North East Canterbury. However, the withdrawal of the LGF could potentially impact the viability of the development and the affordable housing allocation for the developments would be reduced or lost. If there was still a remaining viability issue then there would be further impacts of the S106 contributions such as towards education and health care.
- 8.10 The Project is still expected to proceed, even if the remaining £4.791m LGF is reallocated, and KCC have confirmed that the £1.109m LGF spend to date remains a capital cost in line with the grant conditions. As such, under Option 2, it is recommended that the Board agree the £1.109m LGF spend to date should not be recovered on the basis that the spend to date will enable the eventual delivery of the Project
- 8.11 If the Project is not able to proceed and the £1.109m LGF spend to date becomes an abortive revenue cost this funding must be repaid to the SELEP

Accountable Body, as the spend will no longer meet the grant conditions from Central Government.

9. Financial Implications (Accountable Body comments)

- 9.1 The proposals for funding this Project are complex and whilst there has been good progress in drafting the s106 agreements with the promoters of the developments, not all arrangements are confirmed and have varying degrees of associated risk.
- 9.2 To address some of this risk and to enable the development to be progressed, it is noted that KCC are considering the viability of the options to forward fund up to £5.5m of the Project costs, in advance of the developer contributions being secured. This approach remains subject to confirmation by KCC to the February 2021 Board meeting, as part of the overall funding package.
- 9.3 All LGF is transferred to the sponsoring authority under the terms of a Funding Agreement or SLA which makes clear the circumstances under which funding may have to be repaid should it not be utilised in line with the conditions of the grant or in accordance with the decisions of the Board.
- 9.4 Should the necessary funding or planning permissions not be secured, there is a risk that the Project may need to be cancelled and any LGF funding spent to date may no longer meet the conditions of funding. In these circumstances, under the terms of the Funding Agreement in place with KCC, the LGF spent to date may need to be returned to Essex County Council (ECC), as the Accountable Body, and reallocated through the SELEP investment pipeline.
- 9.5 If the Board agree to reallocate the LGF to another Project on the LGF pipeline, but are assured that there is compelling justification for the Accountable Body not to recover the £1.109m LGF spent on the Project to date, then provided KCC can demonstrate that the LGF grant conditions for Capital expenditure continue to be met, there will be no requirement for this funding to be repaid.
- 9.6 Under the terms of the SLA, any abortive costs that become revenue will need to be returned to the Accountable Body, Essex County Council, as the requirements of the grant agreement will no longer be met.
- 9.7 It is noted that currently further LGF spend is paused on this project until the funding is secured. Given the complexities and size of the risks associated with this Project, on-going monitoring of the risks and dependencies is necessary, to support effective decision making with regard to the use of LGF.
- 9.8 Option 1 of this report's recommendations states that KCC must provide written confirmation to the Accountable Body to confirm the funding package is in place for the Project by 12 February 2021. If KCC are unable to confirm the funding by this time, then there is a risk that SELEP will be unable to demonstrate spend by 31 March 2021.

A28 Sturry Link Road Update Report

9.9 As part of the LGF programme review to Central Government in June 2020, the Accountable Body and SELEP reported spend in full of the LGF programme by 31 March 2021, either through deliverability of the projects or using the Option 4 mechanism. The delay in confirmation of the Project allocation to February 2021, presents a risk that SELEP and the Accountable Body will be unable to evidence project spend by the end of the Growth Deal and meet the spend commitment made in June 2020.

10. Legal Implications (Accountable Body comments)

10.1 There are no legal implications arising from the proposals set out in this report. If the Project is cancelled at a later date, the provisions set out with the SLA in place between ECC, as Accountable Body, and KCC will be activated, and ECC will work with KCC to recover the abortive revenue costs.

11. Equality and Diversity implication

11.1 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.

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

11.3 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 it is possible to identify mitigating factors where an impact against any of the protected characteristics has been identified.

12. List of Appendices

12.1 Appendix A – Confidential appendix – developer contributions

12.2 Appendix B – LGF spend beyond the Growth Deal

13. List of Background Papers

13.1 Business Case for the A28 Sturry Link Road

A28 Sturry Link Road Update Report

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

Role	Date
Accountable Body sign off	
Peter Shakespear	10.11.2020
(On behalf of Nicole Wood, S151 Officer, Essex County Council)	