

Forward Plan reference number: FP/AB/220

Report title: A28 Chart Road Project Update	
Report to Accountability Board on 7th June 19	
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Date: 09.05.2019	For: Decision
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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This report has a confidential appendix which is not for publication as it includes exempt information falling within paragraph 3 of Part 1 of Schedule 12A of the Local Government Act 1972, as amended.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 Chart Road project (the Project), Ashford, Kent and to consider whether the Project should remain within the LGF programme.
- 1.2 The Project has previously been approved by the Board for the award of £10.2m Local Growth Fund (LGF) but is currently identified as a high risk project due to the risk in relation to the availability of the developer funding contributions to the Project.

2. Recommendations

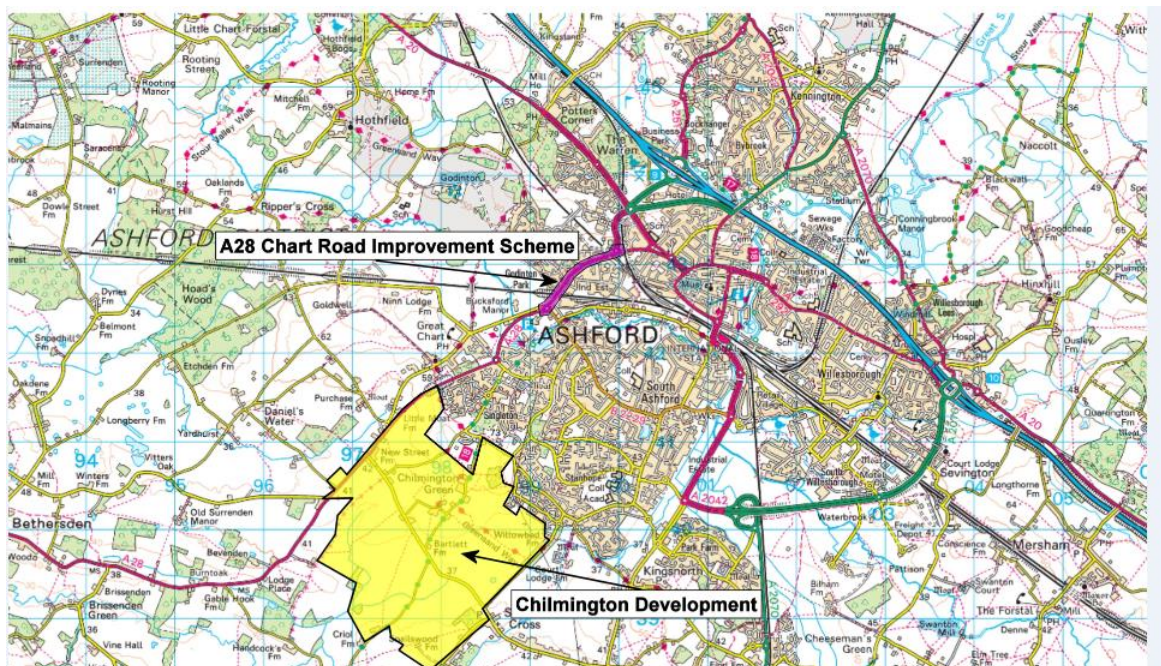
- 2.1. The Board is asked to:
 - 2.1.1. **Agree** that the Project is put on hold;
 - 2.1.2. **Agree** that there is compelling justification for SELEP not to recover the £2.829m LGF spent on the Project to date.
 - 2.1.3. **Agree** that the £7.371m unspent LGF is reallocated through the LGF3b pipeline development process but the Project is considered for future funding opportunities, should such funding opportunities become available.

3. A28 Chart Road (the Project)

- 3.1. 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.

- 3.2. The Project is linked to the Chilmington Green development, with the Project needing to be completed in order to unlock this area for development. This dependency is set out within Ashford Borough Council's local plan.
- 3.3. The Project scope included 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 would both be enlarged to accommodate increased capacity stemming from the carriageway upgrade. The Loudon Way signalised junction would 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. 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 Kent County Council (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 10,000 sqm of B1 use class;
 - Up to 9,000 sqm of A1-A5 use classes;
 - Three primary schools for up to 1,200 pupils; and
 - A site for a Secondary School for up to 1,080 pupils.
- 3.8. 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.

Figure 1 A28 Chart Road relative to Chilmington Green development



4. Project funding risk

- 4.1. Substantial work has been undertaken by KCC towards the delivery of the Project since the Project was approved by the Board in February 2016. This includes approval and possessions planned with Network Rail, detail design, land acquisition and a contractor having been appointed to deliver the Project (although this contractor will now be stood down by KCC)
- 4.2. On the 16th November 2018, the Board received a detailed update report setting out the risk in relation to the developer contributions towards the delivery of the Project.
- 4.3. 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, as detailed in confidential appendix 1.
- 4.4. The agreed funding arrangement between KCC and the Developer was for KCC to forward fund the developer contribution to the Project and for this to be repaid by the developer over a ten year period.
- 4.5. 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.
- 4.6. 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. However, the provision of the security bond has not been forthcoming.

- 4.7. Since December 2017, a number of deadlines have been set by KCC for the provision of the bond by the Developer. Whilst there were initially promising discussions, a security bond has not provided by the developer.
- 4.8. Appendix 2 sets out a series of letters between the Developer, SELEP and KCC. The letter from the Developer indicates that the provision of a security bond will be forthcoming. KCC has requested further confirmation from the developer as to the structure of the security bond that is being proposed. This detail has not been provided. As such, KCC do not have the financial security required to proceed with the delivery of the Project.
- 4.9. In the absence of a security bond from the Developer, the Developer is not meeting their Section 278 obligation to provide their funding contribution to the Project through a security bond until the Section 106 agreement trigger is reached for the occupation of 400 homes. As the trigger point is not expected to be reached until 2022/23, this would substantially delay the LGF spend beyond the Growth Deal period.
- 4.10. There is also no guarantee that this pace of the development will be achieved, to ensure the Developer funding contribution in 2022/23. As such, there is no guarantee as to when the Project will be able to resume delivery.

5. Latest position

- 5.1. Following the update report to the Board in November 2018, the Board agreed to enable the respective Federated Board to consider the next steps for the Project prior to a decision being made by the Board.
- 5.2. At their meeting on the 26th November 2018, the Kent and Medway Economic Partnership (KMEP) agreed that, *"The A28 Chart Road project be put on hold but the LGF to remain allocated to the Project until the 31st January 2019. If, at this time, no bond or adequate security has been forthcoming, then the LGF should be reallocated through the LGF3b process, and the A28 Chart Road project should be prioritised for future funding opportunities, such as the UK Shared Prosperity Fund"*.
- 5.3. Whilst this deadline was not met by the Developer, a letter was sent by Ashford MP, Damian Green to request for the matter to be considered by the Ministry for Housing, Communities and Local Government (MHCLG). As such, additional time was permitted by SELEP to enable options to be considered by Homes England and MHCLG. These discussions have not proved fruitful and the issue of the Developer contribution to the Project remains unresolved.
- 5.4. It is likely that correspondence will be sent directly from the developer to SELEP prior to Board meeting on 7th June 2019 to request a further delay to reallocating the LGF to enable the bond to be arranged. The developer indicated at a Chilmington Green Partner meeting on 17th May 2019 that a 6-month delay in securing the bond would allow greater cost certainty to be achieved. However, previous delays to the decision have not resulted in

adequate progress being made with securing the bond and this matter has been ongoing since January 2018.

- 5.5. As such, it is now recommended that the remaining LGF for the Project is reallocated through the LGF3b process.

6. LGF spend to date

- 6.1. To date, a total of £2.829m LGF has been spent on the Project. In addition, the £1.41m developer contribution to the Project has been received by KCC and spent in full.
- 6.2. Expenditure on the Project to date includes costs for surveys and studies, detail design, utility design costs/fees, Network Rail costs, procurement and land acquisition, including CPO and Public Inquiry costs.
- 6.3. In relation to the £7.371m LGF, which has been spent to date as part of the above expenditure on the Project, KCC have confirmed that this will remain as a capital cost as there remains a need for the delivery of the Project to deliver the 5,750 homes planned at the Chilmington Green site.
- 6.4. The S106 agreement stipulates that this Project must be delivered once 400 occupations have been reached.

7. Options available

- 7.1. Based on the options agreed by the Strategic Board in December 2018, the following three options are available to the Board:
- 7.1.1. Option 1 – Cancellation of the Project from the LGF programme due to being undeliverable within the Growth Deal period and the LGF being reallocated through the LGF3b (single project pipeline development) process;
 - 7.1.2. Option 2 – The Project is put on hold but the LGF remain allocated to the Project; or
 - 7.1.3. 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.
- 7.2. In relation to this specific Project, the implications of the following options are set out in Table 1 below.

Table 1 Options available for A28 Chart Road Project

Options	Positive Implications	Negative Implications
Option 1 - Cancellation of the Project from the LGF programme due to being undeliverable within the Growth Deal period	The LGF can be re-allocated to an alternative LGF3b projects which can demonstrate	The amount of LGF spend to date would become an abortive cost and would need to be returned to SELEP.

Options	Positive Implications	Negative Implications
<p>Under this option, all the LGF would be returned to SELEP for reinvestment, including the LGF spend to date.</p>	<p>deliverability at a faster pace.</p> <p>This may in turn deliver economic benefits to the SELEP area at a faster pace.</p>	<p>The congestion issues at the two junctions along the A28 Chart Road will continue to persist and there will be an increased burden on the developer to deliver the Project in order to unlock the Chilmington Green site, Ashford, for the delivery of up to 5,750 dwellings.</p> <p>Alternative projects brought forward through LGF3b may not deliver the same scale of benefits as the Project.</p>
<p>Option 2 – The Project is put on hold but the LGF remains allocated to the Project.</p> <p>Under this option, the Board would be asked to agree how long the project can be put on hold for.</p>	<p>There are no abortive costs to be repaid to SELEP if the Project is able to proceed at a future date and the LGF spend to date can be accounted for locally as a capital cost.</p> <p>KCC has confirmed that they will continue to account for expenditure to date on the project as a capital cost, as there remains an obligation for the developers to deliver the Project.</p>	<p>Whilst Government has indicated some flexibility to spend LGF beyond the 31st March 2021, there continues to be pressure to demonstrate the delivery of the LGF programme and benefits realisation. The Board has also agreed that a project must satisfy certain conditions to spend LGF beyond the 31st March 2021. These conditions are detailed as part of the capital programme report.</p> <p>The retention of the LGF allocation against this Project would prohibit more deliverable projects from progressing.</p>

Options	Positive Implications	Negative Implications
		It is unclear when the delivery of the Project will be able to resume, should the LGF remain allocated.
<p><u>Recommended Option</u></p> <p>Option 3 – The Project is put on hold and the LGF is reallocated through the LGF3b process</p> <p>Under this option, then the LGF spend to date will not necessarily be treated as an abortive project cost. However, the remaining unspent LGF allocation will be reallocated through the LGF3b process.</p> <p>Under this option, the Project may be put forward as a priority for future funding streams. However, at this stage, the timescales and criteria for expected future funding streams, such as the Shared Prosperity Fund are currently unknown.</p>	<p>The remaining £7.371m LGF allocation to the Project will be reinvested through the LGF3b project to enable alternative projects which can demonstrate deliverability at a faster pace.</p> <p>The £2.829m LGF spend on the Project to date will not be considered an abortive cost, if the Board are satisfied that:</p> <ul style="list-style-type: none"> i) there is compelling justification for SELEP not to recover the £2.829m LGF spend to date on the Project; and ii) the Project is able to proceed at a future date; and iii) the LGF spend to date can still be accounted for locally as a capital project cost. 	<p>The congestion issues at the two junctions along the A28 Chart Road will continue to persist and there will be an increased burden on the developer to deliver the Project in order to unlock the Chilmington Green site, Ashford, for the delivery of up to 5,750 dwellings.</p> <p>Alternative projects brought forward through LGF3b may not deliver the same scale of benefits as the Project.</p>

- 7.3. Given the lack of progress which has been made in securing the Developer contributions to the Project, the recommended option is Option 3. This is for the Project to be put on hold but for the remaining £7.371m unspent LGF to be

returned to SELEP for reinvestment by the SELEP Investment Panel on an LGF3b pipeline project.

- 7.4. Through the National Assurance Framework 2019, central government has stated that, "The LEP is expected to have in place appropriate arrangements to recover non-compliant funding. Where the LEP decides not to pursue recovery where it has identified non-compliance and has legal grounds to do so it must provide a compelling justification for its decision.
- 7.5. As KCC have not been able to complete the delivery of the Project then there are provisions under the Service Level Agreements, for the recovery of the £2.829m LGF spend to date by SELEP, as detailed in section 9 below. However, it is not recommended to the Board that the LGF spend to date should be recovered at this stage, as it is still intended that the Project will progress to delivery at a future date. This is on the basis that KCC continue to account for the LGF spend to date as a capital cost, which is a condition of the funding.
- 7.6. Should KCC reach a stage of agreeing that the Project will no longer progress to delivery, the £2.829m LGF spend to date would be likely to become a revenue cost and will need to be returned to SELEP, as grant conditions from Central Government stipulate that LGF can only be spent on capital expenditure. Should this situation arise then the Board will be made aware.
- 7.7. As a consequence of the Board agreeing for the Project to be placed on hold and the unspent LGF to be reallocated, then this is likely to increase the burden on the developer to fund the full cost of delivering the Project, in order to unlock the Chilmington Green site for development, or for alternative funding sources to be sought. A S106 obligation is, however, in place which requires the developers to provide a bond for the full scheme cost, with or without the LGF funding.
- 7.8. The delivery of dwellings at the Chilmington Green site will also be restricted to 400 dwellings, until the Project is delivered. This will stall residential and commercial development at the site, which holds potential for the delivery of up to 5,750 dwellings, as well as commercial space, three primary schools and one secondary school.
- 7.9. The £7.371m LGF will be considered for reinvestment by the SELEP Investment Panel at its meeting on the 28th June 2019, to projects which have been identified through the LGF3b single pipeline development process. This provides the opportunity for the funding to be reinvested in project(s) which hold greater certainty of deliverability and the potential for a faster pace of benefit realisation.

8. Financial Implications (Accountable Body comments)

- 8.1. In considering the recommendations of this report, the Board is advised to assess the risk of further delay in spend of LGF in ensuring best use of

funding and securing value for money in the use of the grant.

- 8.2. It is noted that £2.8m of LGF expenditure has already been incurred towards the delivery of the Project. In consideration of whether the Board wishes to seek to reclaim this funding, it should be noted that the conditions of the Grant will continue to be met provided that the Project expenditure remains capitalised by Kent County Council (KCC). In the instance that the funding is no longer capital, KCC will be required to repay it in full to Essex County Council (ECC), as the Accountable Body for the SELEP.
- 8.3. ECC is responsible to ensuring that the LGF funding is utilised in accordance with the conditions set out by Government for use of the Grant.
- 8.4. Should the funding not be utilised in accordance with the conditions, the Government may request return of the funding from the Council, or withhold future funding streams.
- 8.5. All LGF is transferred to the sponsoring authority under the terms of a Funding Agreement or SLA which makes clear that future years' funding can only be made available when HM Government has transferred LGF to the Accountable Body.
- 8.6. The Funding Agreements also set out 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. Legal Implications (Accountable Body comments)

- 9.1. The Project has not been delivered in accordance with the business case and in line with the LGF allocation as a result of the reasons set out within this report. The provisions under the Service Level Agreements in place between ECC as Accountable Body and KCC provide for the recovery of the £2.829m LGF spend to date. However, the activation of this provision is not recommended at this time.
- 9.2. KCC remain committed to the Project and have indicated that they are satisfied that they will be able to deliver the Project as proposed within the business case at a future date. In this circumstance there remains a commitment to complete the Project. If KCC determine that they will no longer be able to deliver the Project, the Project will be formally cancelled by the Board and removed from the programme. At this stage the provision for recovery of the spent LGF should be activated.

10. Equality and Diversity implication

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

11. List of Appendices

- 11.1. Appendix 1 - Funding breakdown (confidential appendix)
- 11.2. Appendix 2 - Letter from solicitors to SELEP 31.01.2019 (confidential appendix)
- 11.3. Appendix 3 - SELEP response 25.02.2019 (confidential appendix)
- 11.4. Appendix 4 – KCC response from solicitors 12.03.2019 (confidential appendix)
- 11.5. Appendix 5 – Letter from solicitors 08.04.2019 (confidential appendix)
- 11.6. Appendix 6 – KCC response 10.04.2019 (confidential appendix)

12. List of Background Papers

- 12.1. Business Case for the A28 Chart Road
- 12.2. Accountability Board Agenda Pack 12th February 2016, including decision to award funding to the Project
- 12.3. Accountability Board Agenda Pack 16th November 2019, including an update report on the Project

(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 Stephanie Mitchener (On behalf of Margaret Lee, S151 Officer, Essex County Council)	24/5/19

