

Meeting of the Cabinet

Monday 11th March, 2024 at 5.00pm
In Committee Room 2 at the Council House,
Priory Road, Dudley, West Midlands, DY1 1HF

Agenda - Public Session **(Meeting open to the public and press)**

1. Apologies for absence
2. To receive any declarations of interest under the Members' Code of Conduct
3. Towns Fund Project Update Spring 2024 (Pages 4 - 14)
4. To consider any questions from Members to the Leader where two clear days' notice has been given to the Monitoring Officer (Cabinet Procedure Rule 2.5)
5. Resolution to exclude the public and press

Chair to move:

“That the public and press be excluded from the meeting for the following item of business on the ground that it involves the likely disclosure of exempt information under Part I of Schedule 12A to the Local Government Act 1972, as amended, for the reasons stated on the agenda.”

Under the provisions of Part I of Schedule 12A to the Local Government Act 1972, the Monitoring Officer has decided that there will be no advance disclosure of the following report because the public interest in disclosing the information is outweighed by the public interest in maintaining the exemption from disclosure.

Agenda - Private Session
(Meeting not open to the public and press)

6. Towns Fund Project Update Spring 2024 (Pages 15 - 33)
(The report contains exempt information relating to the financial or business affairs of any particular person (including the authority holding that information)).

Distribution:

Members of the Cabinet:

Councillor P Harley (Leader)

Councillor P Bradley (Deputy Leader)

Councillors P Atkins, I Bevan, R Buttery, S Clark, Dr R Clinton, D Corfield, M Rogers and L Taylor-Childs

Opposition Group Members nominated to attend meetings of the Cabinet:

All Shadow Cabinet Members are invited to attend Cabinet meetings (to speak but not vote)



Chief Executive

Dated: 1st March, 2024

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Submitting Apologies for Absence

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Meeting of the Cabinet - 11th March 2024

Report of the Director of Regeneration and Enterprise

Towns Fund Project Update Spring 2024

Purpose of report

1. The purpose of this report is to provide Cabinet with an update on the Health Innovation Dudley (HID) Towns Fund project (“the project”) and to seek the approvals and resources necessary to progress to the next stage of the project.

Recommendations

2. It is recommended:-
 - That Cabinet note the project update provided in the report;
 - That Cabinet agree to the transition of the project from Phase 1 to Phase 2 of the Insurance Backed Alliance (IBA) process; and
 - That Cabinet recommends to Council that a maximum provision of £1.871m is made in the capital programme to meet the project’s cost pressures including the maximum ‘pain share’. This to be funded by prudential borrowing in the case that further external funding cannot be secured.

Background

3. Dudley Town Centre is one of 100 centres invited by Government to bid for the £3.6bn Towns Fund. The aim of the Fund is to secure long term economic growth and improved productivity. This will be achieved through investment in connectivity, land use, skills, and enterprise infrastructure. The Council made submissions in January 2020, and in 2021, resulting in

the £25m funding award being made to deliver the project and later added to the Council's capital programme. Also, in 2021, planning permission was granted for the project under application P21/1505. Minor changes to the design of the project have since been approved under a Non-Material Amendment permission (reference P21/1505/A1 – see Section 7 below).

4. In December 2022, under Decision Sheet DRE/27/2022, authority was given for the appointment of the Alliance Board. This decision sheet also highlighted pressures related to cost price inflation and the potential impact on the project. The project has since been progressed through the Alliance Board, working towards a deliverable scheme which meets planning, budget and timescale parameters.
5. Cabinet last received a report on the Towns Fund project in December 2022 which provided an update on the project whilst agreeing the making of the CPO ("The Metropolitan Borough of Dudley (Castle Hill, Dudley) Compulsory Purchase Order 2023") and other land assembly related matters. Since then, following refinements to the design and minor amendments to the proposed Order Map, a further formal decision was made on the 18th July 2023 under delegated authority to confirm the making of the CPO for land at Castle Hill with the Order Map and Statement of Reasons (Reference DRE/12/2023).

Land Assembly Update

6. As identified in previous reports, the land for the project is not all within the Council's ownership. The Council is therefore negotiating with the owners of third-party land to acquire their interests and new rights by agreement, whilst at the same time promoting a CPO to acquire the interests and new rights by compulsion, should negotiations to complete assembly of the site by agreement be unsuccessful.

Dudley Zoo: There are multiple leases currently in place between the Council and the Zoo. There are parcels of land on the periphery of the Zoo's demise which are not central to Zoo's operation. Through negotiation with the Zoo, Heads of Terms (HoT) have been agreed for a revised lease which will make available the land and new rights needed for the project while bringing the multiple lease arrangements under a single lease. Final draft documents and plans have been completed and new referencing being applied to amended plots following the boundary changes. The Zoo has not objected to the CPO.

Compulsory Purchase Order: The Order was made on 27th July 2023. Four qualifying (two landowners and two statutory undertakers) and twenty-two non-qualifying objections to the CPO were sent to DLUHC. The non-

qualifying objections largely relate to the demolition of the Hippodrome Theatre. No objections have yet been withdrawn and so a four-day public Inquiry is arranged to take place on the 14th to 17th May 2024. Gateley Hamer and Browne Jacobson are providing specialist advice on the matter. Counsel has been instructed to assist with drafting the relevant documents and to provide advice, guidance and representation up to and including the public inquiry. A decision on confirmation of the Order is expected in July 2024 and provided there is no subsequent legal challenge to the CPO, the Council can expect to take possession of the vested land in December 2024 and commence construction in January 2025.

There are two statutory undertakers that have rights and apparatus within the Order Land of the CPO that have objected to the CPO.

South Staffordshire Water Plc (SSW) have an easement and apparatus that will be unaffected by the project. Although no confirmation has yet been received, it is anticipated that SSW will withdraw their objection.

The other undertaker is *National Grid*. It is envisaged that the Council will have to enter into an Asset Protection Agreement with National Grid to facilitate the withdrawal of their objection to the CPO. This is a standard form of agreement which ensures that National Grid's existing assets in situ and land rights relating to such assets are not detrimentally impacted by the project. The Council is currently awaiting a draft copy of the Agreement from National Grid.

Other matters:

Zoological Drive: New Rights of access over Zoological Drive (ZD) have been included in the Order and heads of terms of the proposed new lease with the Zoo. The project team continue to liaise with the Council's Traffic Team to progress the adoption of the road, and further remedial works have been identified. In addition to the remedial works, additional costs have been identified in relation to the need to install barriers to the Zoo car park entrances and possibly additional lighting columns. It is anticipated that the full adoption is not likely to take place until after the intended start on site for the project. If the CPO has not been concluded by this time to allow access for Construction traffic to use the road, then a temporary license arrangement will be needed with the Zoo.

Hippodrome Theatre: The Hippodrome Theatre demolition was completed on the 10 November 2023 and the site has been graded and secured with 'Regenerating Dudley' branded hoardings facing Castle Hill.

Design Update

7. A Non-Material Amendment (NMA) application was submitted to the Planning Authority on 16 January 2024, reference P21/1505/A1. This was approved on 13 February 2024. The primary amendments being brought forward under this NMA are:
 - bringing the stair core to the east of the building into the main footprint for a more efficient, sustainable envelope;
 - to the front South elevation a single storey element which was set aside for a CDC (Clinical Diagnostics Centre) has been removed;
 - a reduction in (essentially) basement floor area and a slight north-south compression of the building;
 - alongside these the Alliance's design team has also discussed further improvements to the design with the Planning Authority which have been viewed as acceptable and of benefit to the scheme - many of them related to landscape and levels.

The project continues to meet the commitments set out in the Towns fund bid with these amendments.

The Alliance team has also started to progress the work needed to discharge the planning conditions.

Third Parties and Stakeholders Update

8. *Dudley College*: Dudley College will lease the building from the Council on completion. The Heads of Terms for the lease have been progressed, agreed and signed by all parties. Heads of Terms are on the basis of a seven-year term with a longer-term view of seeking exemption from the Secretary of State (SoS) to obtaining best value for the disposal of assets based on the affordability for the leaseholder once the Council are in full possession of the land involved. It is anticipated this should result in a 25-30 year term. Once the Heads of Terms are signed off, an agreement for lease will be entered into and once the final lease has been signed this will be legally binding.

University of Worcester: The University has been selected by Dudley College as a partner to deliver training at the building to be delivered through the project. The University of Worcester have signed up to the agreed Heads of Terms referred to above. They continue to be involved with the College in relation to confirming the brief for the scheme.

Midlands Metro: Initial exchanges of information have been made between the Alliance's design team and the Midland Metro Alliance (MMA) team and boundary overlaps / gaps are being reviewed. At this stage no new or significant matters are expected.

Programme Update

9. The IBA construction contract being employed for this project is structured differently to conventional construction contracts. Apart from the collaborative one team approach, one of the differences is that it is based around a formal two-phase approach. All the detailed design work, cost plans, programmes etc are worked through and finalised in Phase 1. This point has now been reached. Once in Phase 2 the costs and programme are effectively 'locked in' and it is incumbent on the Alliance Board to manage any conditions or factors which might affect these as the building detail is designed and constructed.
10. The current CPO timeline is such that possession of land moves back to December 2024 assuming confirmation of the CPO. This would lead to a meaningful start on site of January 2025 and completion toward the end of summer 2026. There are three main considerations which arise from this:

DLUHC Spend Deadline end of March 2026: The Council is in liaison with DLUHC in relation to the spend deadline and understands that, as a Section 31 grant, the "Freedoms and Flexibilities" mechanism could be employed to manage finances at the end of the programme provided the S151 Officer is content that it is within their own internal established financial processes and procedures. This, in effect, allows the Council to manage the grant funding within its overall capital programme and therefore manage spend deadlines. There is also the possibility of agreeing an extension with the funder in due course.

Inflation Risk - The delay to starting construction from June 2024 to January 2025 poses a financial challenge due to the 4-5% inflationary increases anticipated over the extended period based on industry standard BCIS indices.

End user implications – in the case of further delays, it is likely that the proposed outputs will be delivered through Dudley college's existing estate short term.

Finance

11. The financial ask of the Council is made up of different elements totalling a maximum value of £1.871m. The Council is asked to fund this shortfall through prudential borrowing should alternative sources of funding not be identified as this will be crucial in determining whether the project can proceed into Phase 2 and commence construction.

12. To-date £3.7m has been spent on the Hippodrome demolition, Design Team, legal fees and CPO professional fees. The funding agreements with DLUHC do not detail repayment arrangements for non-delivery. Clarification is being sought but, while this is awaited, repayment of the total grant expended, which currently stands at £3.7m, must be assumed if the project were not to proceed. Being able confirm a viable and deliverable scheme for the project to progress is vital at this stage. This has resulted in the need for a special Cabinet, and it has not been possible to wait for advice on repayment to inform this report.
13. As referred to above and in previous project reports, the IBA construction contract differs to standard contracts in that, once the project has moved into Phase 2, a “pain/gain share” mechanism is activated. For clarity, at the point of moving into Phase 2 the cost plan is ‘locked down’ so all Alliance partners agree that the total project cost set out in the plan is that which the Alliance will deliver it for. Should the construction be delivered more efficiently, and therefore the total project cost is less than the cost agreed end of Phase 1, this benefit is shared amongst the Alliance partners based on agreed proportions set out in the contract. It would not reduce the financial asks of the Council because the Council carries the funding risk, and those funds must be in place before Phase 2 commences. However, the Council would be a beneficiary of the model in the instance that the project concluded in a ‘gain’ outcome.
14. Each partner of the Alliance has a different exposure/benefit in the pain/gain share model. As the client and a member of the alliance, the Council has a 23% share which means that if the project were to come in £1m under the cost agreed at the end of Phase1, the Council would benefit from £230k and pro rata for anything below that. However, if the project were to be over the agreed cost, the Council is committed to contribute 23% to that, to a maximum of £230,000.
15. The project team is reviewing the possibility of utilising a Project Bank Account. This could help alleviate the cashflow position and is being discussed with the Finance and Procurement Team within the Council, the Alliance Team and DLUHC.
16. The budget provision requested through this report has been considered in relation to the Council’s spend control processes and exceptions. In this instance, the risk relating to the repayment of £3.7m grant expended to date for non-delivery, means an exception applies. Compliance with spend control, for as long as it is in place, will be reviewed at all key stages through the project.

17. As detailed in the body of the report, the maximum additional cost to potentially be funded by prudential borrowing is £1.871m, including the maximum painshare. The annual debt charges in relation to this borrowing is approximately £140,000 per annum over a 25 year period. No budget exists for these annual debt charge repayments.

Law

18. The CPO has been made in accordance with s.226 of the Town and Country Planning Act 1990 and s.13 of the Local Government (Miscellaneous Provisions) Act 1976 and in accordance with the Acquisition of Land Act 1981.
19. It is also important that the Council take into account DLUHC's non statutory 'Guidance on Compulsory Purchase process and the Crichel Down Rules' throughout the process.
20. In accordance with that guidance, the Council must be able to show that the project is unlikely to be blocked by any physical or legal impediments to implementation. The Council continues to actively assess this position, and the further funding requirement identified and recommend for approval in this report will ensure that adequate funding is in place to secure the development of the project. This will then be reflected in the Council's Statement of Case and presented at Inquiry.
21. There will always be a risk that a CPO could not be confirmed. As there are outstanding objectors to the CPO, an Inquiry will currently be required. The Council has taken extensive steps to prepare and is being advised by experts, including leading counsel, to ensure all legal processes are followed. The Council will continue to engage with objectors in accordance with the government guidance and Inquiry procedure rules.
22. The project will require several new legal agreements as identified in this report – including an asset protection agreement with National Grid, amendments to the Zoo lease and a temporary license over Zoo land for construction vehicles. The Council will take suitable legal advice at all stages during this process.
23. The Council's compliance with the Equalities Act s.149 duties is set out separately in this report.

Risk Management

24. A project risk register is maintained and reported to the Project Team and Project Steering Group. This is updated and reviewed regularly.

Equality Impact

25. Section 149 of the Equalities Act 2010 created the public sector equality duty. Section 149 states that a public authority must, in the exercise of its functions have due regard to the need to:
 - i) eliminate discrimination, harassment, victimisation, and any other conduct that is prohibited by or under this Act.
 - ii) advance equality of opportunity between persons who share a relevant protected characteristic and persons who do not share it: and
 - iii) foster good relations between persons who share a relevant protected characteristic and persons who do not share it
26. The equalities impact of the Scheme is set out in section 14 of the Statement of Reasons.
27. In making the recommendation to compulsorily purchase the outstanding third-party land, a full Equality Impact Assessment (EIA) has been carried out and remains under review in respect of the proposal to acquire land by agreement and if this is unsuccessful to use compulsory purchase powers to make a CPO, to assess whether or not any protected group has been impacted on, and measures have been put in place, to reduce any negative impacts. As a whole, the Scheme will be positive for the residents, visitors, and businesses of the town Centre. The assessment and impact of the land acquisitions and the CPO process is the focus of this EIA.
28. One of the landowners has confirmed that English is his first language, and he does not require any additional assistance from the Council regarding interpreting or understanding the written information he has received or the verbal conversations that have taken place with him and his advisors. None of the other affected parties are likely to fall within any group with protected characteristics and so the impact of the Council's decision to authorise the making of a CPO to facilitate delivery of the Scheme is considered to be neutral. The Council will continue to consider the impact of its decisions and behaviours upon those parties affected by its ongoing decisions and actions to confirm and implement the CPO.

29. During construction, there will be the need for the temporary relocation of signage and measures need to be put in place to mitigate any temporary negative impacts of this. Advertising media, wayfinding and staff assistance are just some of the measures to be implemented.
30. The provision of a university building in the town will have a positive impact on people with different protected characteristics (age, disability, gender reassignment, marriage and civil partnership, pregnancy and maternity, race, religion, or belief, sex, and sexual orientation) by providing access to health science courses in the borough.
31. The Council's Equality and Diversity policies will be applied throughout the delivery of this project.
32. In terms of its process, procedures and general behaviour towards affected parties to ensure there is no discrimination, the Council and its agents have sought to comply with Government Guidance on compulsory purchase and sought to reduce the anxiety that can be brought about by the threat of compulsory purchase, by ensuring that the affected parties are provided with as much information about what the CPO process involves and the indicative timetable of events; this included 'claimant information' documents.
33. The Council has offered to alleviate any concerns about future entitlement to compensation by explaining to parties their entitlement to compensation and where the party concerned is a business in occupation of its premises, the Council has done what it can to offer advice and assistance in respect to their relocation. Also, to ensure the affected party can have access to professional advice, the Council has offered, and continues to offer, to pay for the reasonable professional fees of affected parties in respect to the disposal of their property to the Council so that they have access to appropriate professional advice."
34. Extensive consultation was carried out as part of the Stage 1 submission using a variety of different methods which allowed the council to reach a wider than normal demographic included more below 25 years old than normal. Generally, the responses were very positive to building a university in the borough.

Human Resources/Organisational Development

35. Any staffing requirements resulting from this decision will be accommodated within existing resources and therefore the decision has no specific impact for HR/OD.

Commercial/Procurement

36. The procurement in relation to this project has already been completed in accordance with the requirements of Contract Standing Orders. There are no direct commercial implications associated with this report.

Environment/Climate Change

37. The new building design is being developed to meet operational net zero carbon emissions and an EPC rating of “A” or as near as possible given building and funding constraints. The design, orientation and mass of the building has been designed to maximise the use of natural light and solar gain; the building will use power photo-voltaic installation and will be heated by air source heat pumps. The external works have been designed to provide shade and minimise water run-off.

Council Priorities and Projects

38. This project positively contributes towards our partnership Borough Visions 2030 – forging a future for all:-
- A place where everybody has the education and skills they need - through the provision of enhanced and expanded further and higher education opportunities and the greater profile of skills in Dudley resulting from the addition of the project.
 - A place of healthy, resilient, safe communities– through the provision of education opportunities in the health and care sector there will be greater capacity to support residents to access the services they need.
 - All residents benefit from access to high quality, integrated health and social care - through the provision of education opportunities in the health and care sector there will be greater capacity to service and support integrated health and social care.
 - Ongoing regeneration schemes are attracting investment, stimulating innovation and entrepreneurs to support new and existing businesses – the project has already attracted investment and is a key part of Dudley’s regeneration story.
 - Our climate commitment is creating a sustainable borough on its way to net zero carbon emissions, improved air quality, reduced fuel

poverty and outstanding waste and recycling services – the building will be designed and constructed to achieve Operational Net Zero Standards seeking to minimise environmental impacts as far as possible within the constraints of the site and funding.



Director of Regeneration and Enterprise

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Appendices

None

List of Background Documents

[Decision Sheet](#) DRE/21/2021 9th August 2021
[Cabinet Report](#) 24th March 2022
[Decision Sheet](#) DRE/27/2022 13th December 2022
[Cabinet Report](#) 14th December 2022
[Decision sheet](#) DRE/12/2023 18th July 2023