

REGENERATION, CULTURE AND ENVIRONMENT OVERVIEW AND SCRUTINY COMMITTEE

11 AUGUST 2022

CALL-IN – FUTURE HOO PROGRESS REPORT

Report from: Richard Hicks, Director of Place and Deputy Chief Executive

Author: Sunny Ee, Assistant Director, Regeneration
Wayne Hemingway, Head of Democratic Services

Summary

This report advises the Committee of a notice of call-in received from eight Members of the Council regarding the Cabinet decisions (26 July 2022) on the Future Hoo Progress Report.

1. Budget and policy framework

1.1 In accordance with Chapter 4, part 5, paragraph 15.3 of the Constitution with regard to decisions, Cabinet decisions 89/90/91/2022 have been called-in to this Committee by eight Members (Conservative Group) of the Council.

2. Background to the Call-in

2.1 The Cabinet considered a report (attached at Annexe A) at its meeting held on 26 July 2022 which provided an update on progress on the Future Hoo project, the related wider planning context and sought approval for the continuation of work to ensure that the infrastructure which would support sustainable development on the Hoo Peninsula was able to be delivered.

2.2 The discussion and decision from the Cabinet meeting are set out below.

2.3 The report provided an update on progress on the Future Hoo project and the related wider planning context, following the successful Housing Infrastructure Fund bid which will provide £170m to be spent on a Strategic Environmental Management Scheme as well as road and rail network upgrades. The report sought approval for the continuation of work to ensure that the infrastructure, which would support sustainable development on the Hoo Peninsula, was able to be delivered.

2.4 In particular the report presented a draft of the Hoo Development Framework (attached at Appendix 1 to the report) which was intended to be published for

public consultation between 15 August and 30 September 2022. The report had been circulated separately from the agenda but had been accepted as urgent to enable the timeline for the consultation period to be met.

- 2.5 It was noted that there was a typographical error at paragraph 4.25 on page 75 of Supplementary Agenda no. 2, within the Design Development Report for Road (Appendix 2). The second reference to the Bell's Lane Roundabout, which was at the 3rd row underneath the header of the table, had been included in error and should have been removed from the document.
- 2.6 The Cabinet was advised that some minor amendments would be required to the documentation before it was issued for consultation, for example, the enhanced education provision section would benefit from greater clarity and accuracy. It was therefore proposed that an additional recommendation be added to those set out at paragraphs 10.1 and 10.2 to the report so that these changes could be effected.
- 2.7 The meeting was adjourned at 3:56pm pending the publication of an updated Appendix 5, which was published as part of Supplementary Agenda No.6. The meeting resumed at 4:30pm.
- 2.8 The key changes made and further changes required to the document were highlighted as follows:
 - Funding remaining to be identified in a table on page 87 was incorrectly stated as circa £4.7 billion. The correct figure was £273,831,322
 - The original Appendix 1B to Appendix 5 contained matters that were entirely policy matters. Costs for these would be determined once policy had been determined.
 - With reference to passenger subsidies, it was noted that costs due to be incurred in six to ten years' time would be a matter to be determined by those who were Members of the Council at that time. The budgetary pressure of £24million had therefore been removed.
 - Highways block wider implications had been correctly included in Appendix 1A to Appendix 5 but should not have been included in Appendix 1B as this specifically related to the Hoo Development Framework. Such references had been removed from Appendix 1B. Related spending had also been removed. It was not possible to accurately predict the costs and pressures for projects delivered as far ahead as 2037. The result of these changes was that the predicted Hoo Infrastructure cost had been revised downwards to £225million compared to £418million. Funds remaining to be identified were now £75 million.
 - The previous version of the document had included certain assumptions related to S106 funding. These were considered to be misleading due to the viability of certain housing assumptions and the difficulty of predicting future development and funding.
 - In relation to Health and Social Care, the funding identified column primarily represented HIF funding and estimated costs were never more than best estimates.

- The original report had set out that all construction costs incurred would have a 40% contingency. This had been removed as it was considered this amounted to a blank cheque that would enable costs to be inflated.
- There were a significant number of costs marked as To be Determined (TBD) within the document. This was considered to be valid as a consultation document was being produced. This would inform actions to be taken and related Council policy and funding.

2.9 In relation to Appendix 1, as set out in Supplementary Agenda No.1 to the report, it was noted that the final bullet point in relation to Hogmarsh Valley on Page 33 of the agenda would be deleted. This would ensure that there would be no misunderstanding that development was required. The bullet point to be removed was as follows – *“Development should respect landscape context, rural character, protect openness and retain views of prominent green wooded backdrop.”*

2.10 The Cabinet’s decision was as follows:

<i>Decision number:</i>	<i>Decision:</i>
89/2022	The Cabinet approved the commencement of consultation on the draft Hoo Development Framework document for a 7-week period and noted that the document would return to Cabinet for consideration following that consultation.
90/2022	The Cabinet approved the continuation of progress on the preparation of the applications for all aspects of the Future Hoo project.
91/2022	The Cabinet agreed to delegate authority to the Director of Place and Deputy Chief Executive, in consultation with the Leader, the Portfolio Holder for Strategic Regeneration, Inward Investment and Partnerships and the Portfolio Holder for Planning, Economic Growth and Regulation, to make any changes considered prudent to appendices 1-5.

Reasons:

2.11 To enable the Future Hoo programme to continue to meet its programme and funding requirements for delivery and to unlock £170m of Government Funding that has been secured to enable the delivery of infrastructure and sustainable development on the Hoo Peninsula.

- 2.12 Decision nos. 89, 90 and 91/2022 were subsequently called in by eight Members of the Council from the Conservative Group. The reasons for the call in are as follows:

“Following the Cabinet meeting of 26th July we are very concerned about the decisions that were taken under Agenda Item 4, The Hoo Development Framework Progress Report.

Due to an adjournment for over half an hour during this meeting it was clear that there were considerable concerns/errors within Appendix 5. These updated papers were then presented to Cabinet members and around 5 minutes later the meeting resumed. Members of the public, unless present, were unable to view these amended documents until after the meeting closed.

Firstly, we do not feel that Cabinet members had long enough to read these amended papers to be able to take an informed decision on them and agree the recommendations.

Secondly, we were alarmed at the changes that took place within these documents raised more questions that now remain outstanding and need clarifying before a consultation on this should go forward.

We are very concerned regarding the HIF project and how this will progress in its entirety within the £170m budget. The original appendix 5 highlighted around £100 million of funding required from s106 to complete what falls within the HIF scheme. The amendments just cut those sections from the document, and it is therefore unclear if this project is on track financially. It is fundamental to the Hoo Development Framework and the consultation going forward, to know if this project can be delivered within budget without the need to be propped up by s106 funding.”

3. Director of Place and Deputy Chief Executive’s response to the Call-in

- 3.1 It is important to set out the context for the contents of Appendix 5 (the Infrastructure Delivery Plan and Schedule for Medway), in terms of both planning policy in Medway, and the relationship with the Hoo Development Framework.

- 3.2 The development of the Infrastructure Delivery Plan and Schedule is an on-going part of the Planning team’s work on the development of the evidence base for the Local Plan. It helps inform the viability assessment work that is being undertaken to ensure that any housing proposals in the Local Plan are able to be found sound, whilst also ensuring that any future allocations enable the delivery of sustainable communities.

- 3.3 This work forms an important part of being able to demonstrate that the Local Plan is ‘sound’ and Medway’s approach reflects the processes undertaken by

local authorities across the country in publishing the evidence base as it becomes available (and has already been undertaken on other technical documents for the Local Plan).

- 3.4 Building on the work undertaken in the Infrastructure Position Statement published in the Regulation 18 consultation in 2017, and the statutorily required Infrastructure Funding Statements published in 2019 and 2020, Appendix 5 forms a 'snapshot' in time of the Council's current thinking on the types of infrastructure that may be required across Medway and on the Hoo Peninsula.
- 3.5 This is useful for potential developers on the Peninsula and throughout Medway to have an understanding of the types of infrastructure that may be asked for as part of section 106 discussions in relation to any planning application, but does not, and cannot, require that such infrastructure is delivered. That will come with the emerging Local Plan or, where that is not adopted, in the decisions of the Members of the Planning Committee on individual planning applications.
- 3.6 As such, and as stated by the Leader in the debate on the document at Cabinet, both the types and extent (which informs the funding requirement) of infrastructure required are policy decisions that will come at a later date, as determined by Members.
- 3.7 As stated by the Leader, the changes presented in the updated version of Appendix 5 therefore sought to make amendments to remove or adjust certain assumptions that had been made by officers, that will in fact require further consideration by Members before they can be agreed as an infrastructure 'requirement' of the Council.
- 3.8 The infrastructure delivery plan and schedule will continue to evolve as the Local Plan process develops, and as Members continue to make decisions about their requirements for development in Medway.
- 3.9 On that basis, and because it forms part of the evidence base for the emerging Local Plan (and therefore part of a wide-ranging framework of technical documents that will be published over the coming months and years), the infrastructure delivery plan and schedule did not form part of the Decisions that were sought to be made at Cabinet.
- 3.10 This can be seen within the Cabinet Report, which noted that work on its development was on-going and that the 'current' version was appended. Work on the document will therefore continue in liaison with Members and published accordingly.
- 3.11 In terms of the relationship between the Infrastructure Delivery Plan and Schedule and the Hoo Development Framework, three important points should be noted:

- 3.11.1 As contained in the Cabinet Report, the development of the Local Plan to date has set out that in order to meet its housing need, development of some form on the Hoo Peninsula will be required. In light of the Council's housing supply position, the outcome of the Housing Delivery Test and as seen in recent Appeal decisions (not only in Medway but in Councils throughout the country in similar positions with their Local Plan and lack of 5 year housing land supply), it is the case that developers are keen to bring forward housing on the Peninsula. There will come a time when these developers will decide that they can no longer wait for the Council to progress its Local Plan and will submit applications. Doing nothing will not prevent such applications being made.
- 3.11.2 The Hoo Development Framework, whilst not a planning policy document, demonstrates the Council's expectations for development on the Peninsula. It sets out expectations of the infrastructure that may be required on the Peninsula but cannot require them. Furthermore, the document is to be the subject of consultation, which may lead to changes in those infrastructure expectations. As such, the infrastructure requirements on the Hoo Peninsula, can only be finalised post consultation on the Hoo Development Framework and once the Council has made decisions on the Local Plan. It is therefore right that the development of the Infrastructure Delivery Plan and Schedule reflects that process and does not at this stage prejudge the results of it.
- 3.11.3 Medway's HIF funding (which was secured in a competitive process) will enable the construction of much-needed infrastructure on the Hoo Peninsula. In so doing, it ensures that the delivery of this infrastructure is undertaken in a comprehensive and masterplanned fashion that prevents piecemeal development and piecemeal infrastructure. Given the scale of infrastructure required (including SEMS), the section 106 contributions that would have been needed to fund that infrastructure would have made development unviable without reducing the contributions being made to other infrastructure requirements such as health and education (likely to the extent that permission could not be granted). The HIF funding therefore both enables direct infrastructure delivery, whilst also ensuring that other infrastructure is funded. The requirements of the latter will be informed by the Hoo Development Framework consultation and the Local Plan process, which ultimately and as discussed above, feeds back into the Infrastructure Delivery Plan and Schedule.
- 3.12 It is therefore not the case that the Infrastructure Delivery Plan and Schedule need to be fully populated and fully funded in order for consultation on the Hoo Development Framework to be carried out. Indeed, it can be seen from a range of authorities across the country and locally in Kent, that these documents habitually present a funding gap which is anticipated in national guidance. The consultation sets the development aspirations which will inform the on-going development of the Local Plan and the Infrastructure

Delivery Plan and Schedule, not the other way round. The HIF infrastructure cannot be divorced from those considerations.

3.13 Finally, it should be noted that the HIF funded projects will be able to be constructed within the funding envelope that is agreed with Homes England and there is regular engagement with Homes England on the progress of the project. There is currently a degree of national uncertainty around inflationary increases and how these impact on the construction sector. However, until tenders are sought, no cost estimates can be made. Whilst funding lines had been included for the operational elements and contingencies, for the reasons the Leader gave at the Cabinet meeting and as set out at paragraph 2.8 of this report, these elements have been stripped out.

3.14 The Council Budget, published in February 2020, noted that on 1 November the Ministry of Homes, Communities and Local Government confirmed that Medway Council had been successful in its £170million 'New Routes to Good Growth' Housing Infrastructure Fund Forward Funding bid. As noted in the Draft Capital and Revenue Budget 2020/21 presented to Cabinet on 19 November, the Housing Infrastructure Fund (HIF) schemes have been added to the Council's Capital Programme under the Chief Finance Officer's delegated authority, as set out in the Constitution, Chapter 4: Part 6, Paragraph 3.

4. Monitoring Officer and Chief Operating Officer's response to the Call-in

4.1 The report to Cabinet provides an update on the progress on the Future Hoo project, the related wider planning context and seeks approval for the continuation of work to develop strategies and plans to ensure that the infrastructure which will support sustainable development on the Hoo Peninsula is able to be delivered. As such it comprises a number of separate documents including the proposed Hoo Development Framework (HDF) and the Council's revised Infrastructure Development Plan (IDP).

4.2 The Council's policy framework is defined in paragraph 4.1a of Article 4 of the constitution. The HDF document shared for consultation may change at the end of that period and thus it is premature to determine if the HDF is contra to the policy framework. The consultation document is not contrary to the policy framework and is in accordance with the budget agreed by Council. The IDP was published as supporting information, not for consultation, further updates will be made to the IDP in due course.

4.3 Notwithstanding Members' concerns regarding the quality of the revised Infrastructure Development Plan (Appendix 5), they in themselves do not call into question Cabinet's decision to "*approve the commencement of consultation on the draft Hoo Development Framework document for a 7-week period...*" and to "*approve the continuation of progress on the preparation of the applications for all aspects of the Future Hoo project*". The changes to the IDP were requested by members of the Cabinet and were subject to lengthy discussions between Cabinet Members and officers

between the period that the Cabinet report and appendices were published (19 July 2022) and the day of the Cabinet meeting. The revised Appendix 5 tabled at the Cabinet meeting reflected the outcome of discussions between Cabinet Members and officers. Once the Cabinet Members indicated they were satisfied that the revised Appendix 5 reflected these discussions, the meeting resumed. Therefore, we are satisfied that the Cabinet were aware of the proposals they sought to consult on.

- 4.4 At the close of that period and the consideration of comments received, those documents may be subject to further change(s). The proposals once approved will set out a broad strategic direction will need to be supplemented with more detailed proposals and more accurate budgetary information as the variables reduce.

5. Options

- 5.1 The options open to this Committee in dealing with this call-in are to:

- a) to consider the matter and accept the Cabinet decision, or;
- b) ask Cabinet to reconsider its decision if Members have concerns about it/them (setting out in writing the nature of any concerns), or;
- c) refer the matter to full Council for consideration.

- 5.2 In accordance with rule 15.8 of the Constitution, to avoid the possibility of very many emergency Council meetings, Overview and Scrutiny Committees should normally only use the power to refer a matter to the full Council if it considers either:

- a) that the decision is contrary to the policy framework (i.e. those policies and plans listed in Article 4.1 of Chapter 2 of the Constitution) or contrary or not wholly in accordance with the budget;
- b) where a request for call-in is signed by six or more members representing at least two political groups.

- 5.3 If the Committee considers the Cabinet decision is, or would be, contrary to the policy framework or not wholly in accordance with the Council's budget, then it must first ask for advice from the Monitoring Officer and/or Chief Operating Officer. If the officer advice is that the decision taken by Cabinet is within the policy framework or budget, and this is accepted by the Committee, then a referral to full Council, on the grounds that the decision is contrary to the budget or policy framework, would not be possible. As mentioned in paragraph 4 above, the Monitoring Officer and the Chief Operating Officer have confirmed that the decisions taken by Cabinet set out in paragraph 2 above are not contrary to the Council's budget or policy framework.

5.4 The Committee may refer the call-in to full Council if:

- the officer advice confirms the view of the Committee that the Cabinet decision was outside the budget or policy framework, or
- the officer advice does not confirm the view of the Committee, but Members do not accept the officer advice.

5.5 In the event of a referral to full Council for reasons relating to the budget or policy framework, Cabinet will then meet to consider the views of the Monitoring Officer and/or Chief Operating Officer, together with the views of the Overview and Scrutiny Committee. Having considered these views, Cabinet will decide what action to take and prepare a report for Council.

5.6 When the Council meets following a referral on the grounds that an Overview and Scrutiny Committee considers that a Cabinet decision is contrary to the policy framework or contrary or not wholly in accordance with the budget, it can decide:

- a) that the Cabinet decision falls within the existing budget and policy framework, in which case no further action is required, or;
- b) to amend the Council's budget or relevant policy framework document to encompass the decision, in which case the Cabinet decision takes effect immediately and no further action is required, or;
- c) to accept that the decision is outside the policy framework or budget, in which case Cabinet must reconsider the matter taking into account the views of Full Council and take a decision which is in accordance with the advice of the Monitoring Officer/Chief Operating Officer and which complies with the budget and policy framework.

5.7 When the Council meets following a referral on other grounds then it can decide:

- a) to accept the Cabinet decisions and therefore take no further action or;
- b) refer the decisions back to Cabinet for reconsideration, setting out the reasons for the referral back.

6. Risk management

6.1 Risk management is addressed in section 5 of the Cabinet report attached at Annexe A.

7. Climate change implications

7.1 Climate change implications are addressed in section 7 of the Cabinet report attached at Annexe A.

8. Financial and legal implications

8.1 The financial and legal implications in relation to the Cabinet decisions are set out at sections 8 and 9 of the Cabinet report attached at Annexe A.

8.2 In accordance with Chapter 4, part 5, paragraph 15.3 of the Constitution, six members of the Council may call in a decision for scrutiny by the relevant Overview and Scrutiny Committee. Call-ins must be dealt with in accordance with Rule 15 of the Overview and Scrutiny Rules and Rule 7 of the Budget and Policy Framework Rules.

9. Recommendations

9.1 The Committee is asked to consider the three called-in Cabinet decisions (decision nos. 89/90 and 91/2022) and decide either to:

- Accept the Cabinet decisions and therefore take no further action or;
- Refer the decisions back to Cabinet for reconsideration, setting out the reasons for the referral back or;
- Refer the decisions to full Council for consideration.

Lead officer contact:

Sunny Ee, Assistant Director, Regeneration

Tel: 01634 331030

Email: sunny.ee@medway.gov.uk

Appendix

Annexe A – Cabinet Report dated 26 July 2022

Please note that revised Appendix 5, which was tabled at Cabinet on 26 July 2022, is included within this pack.

Background papers

None