

CHESHIRE EAST COUNCIL

Cabinet

Date of Meeting:	1 st April 2014
Report of:	Director of Economic Growth & Prosperity
Subject/Title:	Middlewich Eastern Bypass & Midpoint 18 (Forward Plan Ref: CE 13/14-39)
Portfolio Holder:	Councillor David Brown - Deputy Leader and Strategic Communities and Councillor Don Stockton - Housing, Planning, Economic Development and Regeneration

1.0 Report Summary

- 1.1 The Council has set out a clear vision and strategy for jobs-led economic growth, which articulates the rationale and plans for increasing productivity and creating new jobs. This is based on the strong competitive advantage and track record that the Borough has in terms of its skilled workforce, existing business base, entrepreneurial spirit, quality of life and its national, regional and local infrastructure and connectivity.
- 1.2 This paper presents an opportunity to the Council to support major growth using our leverage as a key mechanism to facilitate significant private sector-led investment.
- 1.3 Midpoint 18 is a successful £100m, 180 hectare (450 acre) mixed use business park located to the east of Middlewich town centre. It currently supports over 2,000 jobs through employers that include Wincanton, Velcro Ltd, SP Power Systems and Lechler Coatings.
- 1.4 In 2008 Pochin Developments Ltd (PDL) was granted outline planning consent for an extension to the existing Midpoint 18 scheme ('Phase 3') to include the completion of the southern section of the Middlewich Eastern Bypass, which is a requirement to open up the site for development. This has the potential to enable the creation of 143,000m² (1.5m ft) of business space supporting up to 2,800 additional jobs. Detailed consent has since been granted for the bypass and an initial development plot.
- 1.5 £19.5m of the £22m cost of the bypass has been identified, subject to securing the final £2.5m. PDL and the Council have worked closely over recent years to reduce the funding gap to this level, which included securing an allocation of £4.1m from the Government's Regional Growth Fund (RGF). The Cabinet meeting of 25th June 2012 agreed to act as the grant recipient for this RGF funding, but a gap of £2.5m remains.

- 1.6 This report seeks Cabinet's support to underwrite the remaining costs of the bypass up to £2.5m, on the basis that other funding will be sought to be used as an alternative to replace its underwriting, or for the Council to recoup if allocated. This could be from developer contributions, Community Infrastructure Levy and other public sector funding sources (e.g. Local Growth Fund).
- 1.7 This report also seeks Cabinet support to delegate authority to accept a revised final grant offer letter from BIS for the £4.1m RGF, which will comprise revised timetables, milestones and outputs resulting from the delay in securing alternative funding.

2.0 Recommendations

2.1 Cabinet is recommended to

- a) Make a formal offer to Pochin Developments Ltd (PDL) to underwrite the shortfall in cost of delivering the final section of Middlewich Eastern Bypass, up to a maximum of £2.5m.
- b) Agree that the Council continues to seek alternative funding for the bypass, including from developer contributions, Community Infrastructure Levy and other public sector funding sources (e.g. Local Growth Fund), which could be used as an alternative to replace its underwriting, or for the Council to recoup if allocated.
- c) If the Council's underwriting is called upon, to delegate authority to the Director of Economic Growth & Prosperity, in conjunction with the Portfolio Holders, to award this sum by means of a grant agreement in a form approved by the Head of Legal Services to PDL, subject to the securing of all other funding to deliver the bypass.
- d) Delegate authority to the Director of Economic Growth & Prosperity and Head of Legal Services, in consultation with the Portfolio Holders, to accept a revised final grant offer letter from BIS in relation to the £4.1m Regional Growth Fund (RGF) allocation, subject to:
 - i) the satisfactory advice of the Head of Legal Services & Monitoring Officer.
 - ii) CEC obtaining legal advice clarifying whether formal procurement of any involved entities (including principal contractor) is required by law or by BIS or recommended to manage risk as referred to in 9.0, and PDL's acceptance of our resulting approach.
 - iii) securing agreement of all funding parties to a revised delivery timetable that complies with respective requirements.
 - iv) appropriate inputs from PDL and its partners in providing all information required to satisfy RGF criteria, s278 agreement, etc

3.0 Reasons for Recommendations

- 3.1 The Council has set out a clear vision and strategy for economic growth, which articulates the rationale and plans for increasing productivity and creating new jobs. This is based on the strong competitive advantage and track record that the borough has in terms of its skilled workforce, existing business base, entrepreneurial spirit, quality of life and its national, regional and local infrastructure.
- 3.2 Midpoint 18 Phase 3 is one of the borough's most deliverable and prominent employment sites, with outline planning consent in place and a clear strategy for delivery of the requisite infrastructure. It is evident that the commercial property market is picking up, with a number of major deals being made or in the pipeline, which Cheshire East, as a borough, has been unable to accommodate. Market intelligence suggest that development and investment interest will continue, particularly given that our supply of quality commercial and industrial floorspace has fallen significantly since speculative development ceased at the start of the recession in 2008.
- 3.3 The proposed development is expected to deliver significant benefits to the borough, including:
- a) Enabling the creation of 143,000m² (1.5m ft²) of new business premises and up to 2,800 jobs.
 - b) Environmental benefits arising from traffic being diverted away from Middlewich Town Centre, thereby improving conditions for residents, businesses and visitors.
 - c) Reduction in congestion on the A54 link to the M6, particularly the section between Leadsmithy Street and Pochin Way.
- 3.4 Middlewich Eastern Bypass is identified as a key project within the Council's major programme of new strategic infrastructure across the borough, which is currently one of the largest outside of a major conurbation in the UK. It will enable draw-down of Government investment of £4.1m and will deliver benefits in terms of unlocking economic growth, delivering highway network efficiency improvements, and also providing environmental benefits.
- 3.5 Without this timely expression of support by the Council:
- a) It is almost certain that the timetable for delivery of the bypass will slip. This, in turn, will result in:
 - b) Other funding, including the £4.1m RGF grant, being withdrawn on the basis that it cannot be spent within the specified spending period.

- c) The viability of other proposed development outside of the proposed sites, could be considered unsound, with the result that potential related developer contributions towards the scheme are not forthcoming
- d) The existing planning consent will expire, such that a new application will be required which will necessitate revised technical assessments to be undertaken, including an environmental impact assessment
- e) That the failure in delivery of the bypass and Midpoint 18 Phase 3 will reflect negatively on the Council and its partners in terms of its capacity to deliver major development projects.using funding from either the public or private sector.

3.6 The Council would also benefit from this approach directly through an increase in the level of business rates income received, resulting from further commercial development at Midpoint Phase 3.

4.0 Wards Affected

4.1 Middlewich, Brereton Rural

5.0 Local Ward Members

5.1 Cllrs Paul Edwards, Simon McGrory, Michael Parsons (Middlewich)
Cllr John Wray (Brereton Rural)

6.0 Policy Implications

6.1 The proposal in this report relates directly to two key outcomes identified in the Council's Three Year Plan:

Outcome 2: Cheshire East has a strong and resilient economy

Outcome 6: Cheshire East is a good place to live and work

6.2 The proposal aligns strongly to the Council's *Economic Development Strategy* and its more recently created *Vision and Strategy for Economic Growth: East Cheshire Engine of the North*, which articulates the rationale and plans for increasing productivity and creating new jobs. This is based on the strong competitive advantage and track record that the borough has in terms of its skilled workforce, existing business base, entrepreneurial spirit, quality of life and its national, regional and local infrastructure and connectivity.

6.3 Middlewich Bypass is referred to in Policy CO2 in the emerging Local Plan Core Strategy plan and the associated Infrastructure Plan. Policy SL10 proposes an extension to the Midpoint site, dependent on the delivery of the bypass.

7.0 Financial Implications

- 7.1 As a result of any underwriting, the Council may be required to finance the funding gap of up to £2.5m, the initial outlay of which it would seek to recoup from developer contributions, Community Infrastructure Levy and other public sector funding sources in future years.
- 7.2 The required forward funding would have an impact on the cash flow for the Council and will therefore result in a loss of investment income. There is also a risk that any expenditure may not be fully recouped and will require direct funding from the Council's own capital resources.
- 7.3 The expenditure of £2.5m would increase the capital financing requirement and in the short term the Council would be required to borrow and finance the debt repayment charges. The annual repayments which will commence on completion of the scheme, if funded through this route, would amount to £152,000 p.a. based on a 25 year straight line repayment period and an interest rate of 4%.
- 7.4 The Council would seek to reduce external interest rate costs through internal borrowing where possible. The receipts from developer contributions, CIL and the other funding sources would be used to repay the debt and reduce the ongoing debt repayment charges as they arise. The period of time over which this could be achieved cannot be guaranteed and therefore remains a risk to the Council.
- 7.5 The Council would expect to benefit from this approach directly through an increase in the level of business rates income received, resulting from further commercial development at Midpoint Phase 3.

8.0 Legal Implications

- 8.1 The Council, if called upon to enact its underwriting from its own resources, as well as the Government's RGF programme, would be giving financial aid to an undertaking carrying out an economic undertaking. The Council has obtained satisfactory external specialist state aid legal advice confirming that this will not constitute unlawful state aid.
- 8.2 In terms of the RGF allocation, the Council will enter into legal arrangements with PDL under which obligations imposed by BIS on the Council, other than administrative obligations, will be passed on to PDL. Similarly, risks to the Council, especially in terms of variation or withholding of or claims for repayment, will be mirrored in the Council – PDL agreement(s).
- 8.3 The Council will contribute less than half of the cost of the bypass so, provided that it is confident that it will not "specify" works but merely perform its usual role as highways authority and planning authority, then there is a good argument, supported by case law, that the Council is not a contracting authority for the purposes of the EU Public Contracts Regulations 2006. However, as BIS's monitoring role under the RGF grant offer and the Council's involvement in

monitoring could be contended to extend to specifying works, and as, under the grant conditions, responsibility for ensuring the entire arrangement is procurement compliant, rests with the Council, we may require further external specialist legal advice as to whether any OJEU procurement is necessary or desirable and/or the actions recommended to mitigate risk of challenge.

- 8.4 If the Council is to dispose of any land to facilitate the project, then it will have to obtain the best consideration reasonably obtainable, unless it can rely on the General Disposal Consent (England) 2003. A separate approval will be required for any such disposal.

9.0 Risk Management

- 9.1 The merits of the proposal have been appraised by the Major Projects & Regeneration Manager and Corporate Manager (Strategic Infrastructure) and the legality of receiving and giving the RGF grant, the additional underwriting, and any subsequent payment, has been considered by the Head of Legal Services & Monitoring Officer.

- 9.2 In terms of administering the RGF, there are no significant risks to the Council, since all the fundamental terms of the funding agreement the Council enters into with BIS will be mirrored in the funding agreement the Council will have in place with PDL.

Specific risks

- 9.3 *Risk:* As identified in the original Cabinet report, BIS could withhold or call for repayment of RGF grant monies due to:
- the job targets not being achieved
 - PDL not being solvent or being otherwise unable to repay the grant clawed back from the Council
 - the bypass not being completed
 - any obligation under European Union Law or a decision by the European Commission

Mitigation: Within the RGF funding agreement, there is a 15 year monitoring period in relation to the job creation and repayment is calculated according to the jobs shortfall. In order to mitigate against the risk, financial checks have been made in respect of PDL, and will be sought again prior to payment of any grant monies. The Council has already undertaken an independent Due Diligence assessment of the project and the delivery plan, including job creation. In the grant funding agreement with BIS, the Council is only obligated to use its reasonable endeavours to recover such sums from PDL.

- 9.4 *Risk:* The principal secondary risk is the viability risks to PDL, who may incur debt and interest charges if they are unable to recoup income associated with the bypass and development in the timeframe they envisage.
Mitigation: A further financial check on the company will be undertaken to mitigate this but, ultimately, it will not impact on the delivery of the bypass itself.

- 9.5 Whilst not a direct risk to the Council itself, the complex funding mix required to deliver the bypass does increase the risk of it not being delivered.
- 9.6 *Risk:* That delays to finally securing any of the component funding will incur delay to the delivery timetable, which include a knock-on impact on the contracted funding requirements of RGF, and potentially: a) require a revised delivery programme/timetable and b) reflect negatively on the Council as a delivery partner.
Mitigation: A delivery timetable has been provided by PDL indicating that all key components of the project can be delivered on schedule. This will be monitored by PDL and the Council and, where necessary, specific mitigation and contingency measures will be put in place. The release of any funding will be dependent on the Council being satisfied that the project can be delivered on-cost, on-time and in accordance with all its contractual obligations.
- 9.7 *Risk:* That an aggrieved developer or contractor challenges on the basis that the arrangement, taking into account the conditions of the grant funding, is a public works contract and should have been procured.
Mitigation: Limiting the involvement of the Council in the process to merely complying with the grant conditions, e.g. in respect of monitoring and reporting, and confining its role beyond this to that of highways authority through the section 278/ 38 agreement and planning authority and/or publishing a contract award notice or voluntary transparency notice in the Official Journal or requiring an EU procurement process. Taking continued specialist advice on procurement law to assist in risk analysis and management.

10.0 Background and Options

- 10.1 The Council has set out a clear vision and strategy for economic growth, which articulates the rationale and plans for increasing productivity and creating new jobs. This is based on the strong competitive advantage and track record that the borough has in terms of its skilled workforce, existing business base, entrepreneurial spirit, quality of life and its national, regional and local infrastructure.
- 10.2 Cheshire East has all the right ingredients to see a step change in economic productivity and become a growth engine of the north. As such we have a refreshed focus to ensure that we will:
- Utilise our strategic assets to drive economic growth
 - Increase our focus on securing new investment from both current and new inward investors
 - Strengthen our approach to major development projects and programmes that build upon our key commercial, institutional and sectoral assets
 - Drive stronger and faster regeneration in our town centres, as a vital component in the well-being of our economy and communities
 - Ensure that the Council and its commercial stakeholders are well positioned to secure new funding for projects, coming through Cheshire & Warrington Local Enterprise Partnership, private sector partners and others

- 10.3 Investment in strategic and local infrastructure will continue both delivering against existing infrastructure schemes but leveraging in more investment from Government and the private sector to deliver a large programme of new roads and highway improvements. This will help ensure our towns have highly accessible sites to attract new investors and jobs, keen to locate at sites that have unrivalled road and rail connectivity.
- 10.4 Midpoint 18 is a successful £100m, 180 hectare (450 acre) mixed use business park located to the east of Middlewich town centre. It currently supports over 2,000 jobs through employers that include Wincanton, Velcro Ltd, SP Power Systems and Lechler Coatings.
- 10.5 PDL was granted outline planning permission in June 2008 for a mixed use development including B1, B2 and B8, appropriate leisure and tourism (including hotel) uses, the completion of the southern section of the Middlewich Eastern Bypass, and associated landscaping works.
- 10.6 The bypass itself and an initial development plot have received detailed planning permission. Key to this permission was the condition that buildings could not be occupied until the whole of the bypass has been opened to traffic.
- 10.7 It is proposed that the development will be accessed via an extension to Pochin Way as a 2.2km section of road passing through the site extending to Booth Lane to the south. The scheme would provide economic and transport benefits to Middlewich and the wider area, although it has never been an identified strategic Local Transport Plan (LTP) priority.
- 10.8 The key outcomes of the scheme are expected to be:
- Creation of 143,000m² of business development and around 2800 jobs.
 - Environmental benefits as traffic routes away from Middlewich Town Centre improving conditions for residents and visitors and enhancing the retail experience.
 - Reduction in congestion on the A54 link to the M6, particularly the section between Leadsmithy Street and Pochin Way.
- 10.9 Midpoint 18 is not considered to be a strategic regional site but it has sub-regional importance and has been identified as one of thirteen sites with strong potential to facilitate the future economic growth of the Cheshire and Warrington sub-region. The site itself is attractive as a distribution location owing to its strategic road links, but needs the development of the full site to reach its full potential.

Delivery Issues

- 10.10 The delivery programme being followed is linked directly to the requirements of the RGF funding. It is recognised that there are risks that could impact on the

delivery programme and timetable. These are being monitored by PDL and the Council to ensure that they can be mitigated or, if necessary, an alternative delivery programme can be put in place which places to further direct risk on the Council.

- 10.11 Midpoint 18 is in an enviable location close to Junction 18 of the M6 and, despite the recession, there continues to be strong interest from occupiers, which is evident through recent deals at Midpoint, as well as other locations in the borough (e.g. Expert Logistics in Crewe, Waters Corporation in Wilmslow). It has to be recognised however that the scheme may compete as a distribution location with Basford West in Crewe, which has been identified as a strategic priority for the Council in terms of its role in the All Change for Crewe regeneration programme. However, in order to compete with locations outside of the borough, it is crucial that we are able to offer sites capable of accommodating new developer and occupier interest.

Land Assembly & Interests

- 10.12 The delivery of the Middlewich Eastern Bypass and the development of land at Midpoint 18 remains dependent on the assembly of land ownerships across the site. Currently the land proposed for Phase 3 of Midpoint 18 is occupied by a number of different landowners including PDL (the developers of Midpoint 18) and Bovale.

Financial Appraisal and Funding

- 10.13 Although this is private sector led, even at the height of the market the scheme was not financially viable without public sector subsidy. In 2007, an informal grouping of developers, former Cheshire County Council and North West Development Agency (NWDA) officers and the main developers (PDL and Bovale) put together proposals for a public-private funding package.
- 10.14 The total cost of the Bypass, including the railway crossing, is approximately £22m which was to be funded primarily through a developer/landowner contribution of almost £13m. In support of the private sector funds, circa £3m was identified through former Cheshire County Council's LTP2 budget and a funding proposal was made to the North West Regional Development Agency (NWDA) for £6million. Subsequently the scheme was withdrawn from the grant application process as a tripartite agreement between the Council, developers and the NWDA was not reached.
- 10.15 As soon as the Government announced the phased closure of NWDA, funding has not been available from this source. The final year of LTP2 designated funding was in 2010/11 but, with no secure delivery commitment for the bypass at this time, funds were refocused elsewhere. There was no subsequent allocation for this scheme in LTP3 for Cheshire East.
- 10.16 In 2010, the Council appointed a consultancy team led by AECOM to undertake an independent appraisal of the proposal and the development of a delivery strategy for the bypass. This report has been critical in informing the Council's

position and the wider business case for investment, and has been used in the justification for funding through PDL's Regional Growth Fund (RGF) bid.

- 10.17 In 2011 £4.1m was allocated from the Government's RGF as a result of PDL's successful bid, which was endorsed by the Council. Subsequently the Council was requested to act as the grant recipient and accountable body to receive and manage the grant.
- 10.18 To facilitate this request, approval was sought from, and given, by Cabinet at its meeting of 25th June 2012, to:
- i) agree that the Council shall act as the grant recipient for this project and to accept the terms of a conditional grant offer letter from the Secretary of State for Business, Innovation and Skills (BIS), subject to the satisfactory advice of the Borough Solicitor.
 - ii) delegate authority to the (then) Strategic Director (Places & Organisational Capacity), in conjunction with the Portfolio Holder, to accept the final grant offer letter, subject to the satisfactory advice of the Borough Solicitor and independent Due Diligence advice.
- 10.19 Since then, further work has been undertaken between PDL, the Government (i.e. Department for Business, Innovation & Skills (BIS) and its agent, Department for Communities & Local Government (DCLG)), to address the conditions of the funding, including undertaking Due Diligence.
- 10.20 However, in 2012, it became apparent that the private sector funding allocation of £17.9m could not be achieved. This was as a result of the failure of the proposed Covanta energy-from-waste plant securing planning consent for a site within the proposed development. Without the consent, a £2.5m voluntary contribution towards the cost of the bypass could not be achieved.
- 10.21 Since November 2012, PDL and the Council have been working with other interests, including BIS/CLG to secure an additional £2.5m towards the costs of the bypass, without success. Given constraints to the delivery timetable of the bypass, including the timetable for drawing down the £4.1m RGF grant and the lifetime of the existing planning consent, there is an immediate need to underwrite the £2.5m gap to secure the RGF and other allocations.

Alternative means of delivery

- 10.22 From our previous viability appraisal, it is evident that there is insufficient value in the development of Midpoint 18 Phase 3 and related developments to meet the costs of the bypass that such development requires. The only means by which the private sector development could facilitate this would be if housing or retail uses were considered as part, or all, of the development site. However, this is not the favoured approach of either the Council or PDL, given its allocation and design as an employment site, linked to existing employment uses.

10.23 In terms of public grant funding for such schemes, RGF remains the only mechanism of this kind at present. The project is not eligible for ERDF or Evergreen funding in the foreseeable future for the delivery programme as identified that has been agreed here.

10.24 The Government has announced that future major transport scheme funding will be included in the 'Growth Deal' to be negotiated with Local Enterprise Partnerships. The earliest funding would be available from this source would be April 2015. The council is investigating whether it may be possible to use future 'Growth Deal' funding to replace the Council's underwriting or reimburse it, if made.

11.0 Access to Information

The background papers relating to this report can be inspected by contacting the report writer:

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