

Cabinet



St Edmundsbury
BOROUGH COUNCIL

Title of Report:	Eastern Relief Road, Bury St Edmunds: Update	
Report No:	CAB/SE/15/017	
Report to and date/s:	Cabinet (Special)	24 February 2015
	Council	24 February 2015
Portfolio holder:	Cllr John Griffiths Leader of the Council Tel: 01284 757001 Email: john.griffiths@stedsbc.gov.uk	
Lead officer:	Steven Wood Head of Planning and Growth Tel: 01284 757306 Email: steven.wood@westsuffolk.gov.uk	
Purpose of report:	To provide an update with regard to the Eastern Relief Road project since the last reports (Papers F97 and F120 refer) dated 2 and 23 September 2014 were presented to Cabinet and Council; to ask for authority to forward fund electricity costs up to £4.5m; to request delegated authority to enter into legal agreement(s); and to ask for authority to fund specialist advice of £150,000 in relation to the total project.	

<p>Recommendations:</p>	<p>It is <u>RECOMMENDED</u> that:</p> <p>(1) subject to the approval of full Council and the satisfaction of the Section 151 and Monitoring Officers, a commitment be made to the full £4,528,871 million programme of works for the provision of electricity to serve Suffolk Business Park, including an immediate financial allocation of £356,186 currently due on 27 February 2015, as detailed in Section 3 of Report No: CAB/SE/15/017;</p> <p>(2) Cabinet approves the amendment and clarification of resolutions (1) and (2) at its meeting on 2 September 2014 (minute 42 refers) in accordance with paragraphs 3.2 and 3.3 of Report No: CAB/SE/15/017;</p> <p>(3) subject to the approval of full Council and the satisfaction of the Section 151 and Monitoring Officers, delegated authority be given to the Head of Planning and Growth in consultation with the Leader of the Council to enter into an agreement or agreements to be entered into by St Edmundsbury Borough Council (SEBC) and the developer/landowner to enable the development of Suffolk Business Park and Eastern Relief Road to enable SEBC to realise a return on its investment in line with the principles approved in the Medium Term Financial Strategy; and</p> <p>(4) Council be asked to approve the financial allocation of £150,000 towards the costs of specialist advice for this project from reserves.</p>
<p>Key Decision:</p> <p><i>(Check the appropriate box and delete all those that do not apply.)</i></p>	<p><i>Is this a Key Decision and, if so, under which definition?</i></p> <p>Yes, it is a Key Decision - <input type="checkbox"/></p> <p>No, it is not a Key Decision - <input type="checkbox"/></p> <p>Key Decision in part, however, the majority of decisions require full Council approval.</p>

Consultation:		<p>The development of the Eastern Relief Road and Suffolk Business Park is a long established policy of SEBC. Most recently the Vision 2031 documents confirm the allocation of the residential, commercial and leisure/community uses along with the ERR and junction 45 of the A14 Trunk Road upgrade.</p> <p>In June 2010 the Masterplan for the extension to Suffolk Business Park was adopted following the due consultation phase.</p> <p>A series of meetings have also been held with Rougham Parish Council; Moreton Hall Residents' Association; and local business representative organisations.</p>	
Alternative option(s):		<p>Not to commission the electricity works would result in a delay to the programme such that electricity may not be available in time for the first occupiers of the school, residences or commercial land.</p> <p>To delay the works would adversely affect the programme as above and may result in an increase in costs.</p> <p>Not to secure specialist advice would put the Council at risk of legal challenge and may result in the Council not achieving best consideration for its finances.</p>	
Implications:			
Are there any financial implications? If yes, please give details		Yes <input checked="" type="checkbox"/> No <input type="checkbox"/> • As detailed in the report	
Are there any staffing implications? If yes, please give details		Yes <input checked="" type="checkbox"/> No <input type="checkbox"/> • Time and resources of existing staff to enable the project to progress	
Are there any ICT implications? If yes, please give details		Yes <input type="checkbox"/> No <input checked="" type="checkbox"/> •	
Are there any legal and/or policy implications? If yes, please give details		Yes <input checked="" type="checkbox"/> No <input type="checkbox"/> • As detailed in the report	
Are there any equality implications? If yes, please give details		Yes <input checked="" type="checkbox"/> No <input type="checkbox"/> • As detailed in the report	
Risk/opportunity assessment:		<i>(potential hazards or opportunities affecting corporate, service or project objectives)</i>	
Risk area	Inherent level of risk (before controls)	Controls	Residual risk (after controls)
Growing Places Fund application is refused	Low	Early consultation with GPF officers. We could seek an alternative loan fund or make use of Council balances	Low
Taylor Wimpey is unable to provide its £1.4m contribution	Medium	Include a mechanism in the legal agreement to enable the funding to be recovered anyway.	Low

The costs increase throughout the programme or costs exceed the estimates	Low	Fix the prices in the legal agreement with the electricity provider.	Low
The commercial lets do not come forward within the timescale to repay the loan	Medium	Engage a commercial developer to promote the land.	Low
Ward(s) affected:	All Wards		
Background papers: <i>(all background papers are to be published on the website and a link included)</i>	Report F97 to Cabinet: 2 September 2015 Report F120 to Council: 23 September 2015 Suffolk Business Park Masterplan dated June 2010		
Documents attached:	None		

Key issues and reasons for recommendation(s)

1. Background

- 1.1 Report F97 "Eastern Relief Road, Bury St Edmunds" made recommendations to Cabinet which were approved by Cabinet on 2 September and then full Council on 23 September 2014. Council resolved that there be an allocation of £3m of investment into the Eastern Relief Road. Cabinet had resolved (Minute 42 resolutions (1) and (2) that a further report be brought back regarding delegated authority to enter into legal agreement(s) with the developer/landowner(s); and also resolved that delegated authority be given to enable officers to enter into a £3m loan agreement for electricity infrastructure works. This report seeks to provide Members with an update regarding the Cabinet resolutions detailed above.

2. Legal Agreements

- 2.1 It was envisaged that a report would be brought back to Cabinet on 21 October 2014, providing an update regarding the legal agreements necessary between SEBC and landowners. It has taken longer than anticipated to progress the legal agreements and therefore this report seeks to address this matter.
- 2.2 The Council is in the process of agreeing the "heads of terms" of an agreement to detail the return for its £3m investment (as approved by Council on 23 September 2014) in line with the principles approved in the Medium Term Financial Strategy. The heads of terms seek to provide an agreed way for parties to enter into joint working arrangements and often include commercially sensitive information including the mechanism for payments relating to land acquisition and upfront infrastructure costs. Following the approval of the heads of terms there may be subsequent legal agreements to deal with specific elements of the development. It is requested that subject to the satisfaction of the Section 151 and Monitoring Officers, delegated authority be given to the Head of Planning and Growth in consultation with the Leader of the Council to enter into an agreement or agreements relating to the development of Suffolk Business Park/Eastern Relief Road.

3. Electricity Infrastructure Funding

- 3.1 Minute 42 from the Cabinet meeting on 2 September 2014 records the following resolution:

Subject to the Section 151 and Monitoring Officers being satisfied with the outcome of the due diligence referred to in (1) above, delegated authority be given to the Head of Economic Development and Growth in consultation with the Leader of the Council, to make an application to and enter into a loan arrangement with the New Anglia Local Enterprise Partnership for £3 million from its Growing Places Fund to enable the electricity infrastructure works to be commissioned as detail in Section 4.9 of Report F97.

- 3.2 For the avoidance of doubt, Council is asked to amend this delegation to refer to the Head of Planning and Growth (in consultation with the Leader of the Council) as the post of the Head of Economic Development and Growth no longer exists.

- 3.3 Further, Cabinet is requested to increase the amount of the loan from the £3m agreed in September 2014 to £4,528,871m. This is to ensure that the total costs of the electricity infrastructure works can be covered by the loan. It is anticipated that Taylor Wimpey will contribute a further £1.4m in relation to the residential development.
- 3.4 An application for £4,528,871m of Growing Places Fund towards electricity infrastructure works has been sent to New Anglia Local Enterprise Partnership (NALEP). NALEP has indicated that it hopes to be able to determine this application at its next Board meeting on 20 March 2015.
- 3.5 NALEP's Growing Places Fund is an allocation of funding set aside by the LEP to provide loan funding to help stalled and delayed infrastructure projects. NALEP states that the government's aim for the Growing Places Fund is to address constraints on otherwise viable schemes that are not able to proceed without targeted investment in pieces of infrastructure which unlock development.
- 3.6 Early discussions with officers at NALEP have indicated that the electricity infrastructure funding for Suffolk Business Park is the type of project that would be likely to be funded under the GPF programme. The fact that NALEP would effectively be entering into a loan arrangement with SEBC is also an advantage as it removes most of the necessary due diligence work that the LEP is required to undertake when lending to a private body/company/individual.
- 3.7 Interest rates for the loan will be calculated by the LEP on the basis of who they are lending to, for how long and the risk level involved. If the loan application is approved the offer letter will set out the level of interest payable and the terms of the loan.
- 3.8 It is proposed that the loan (including interest charges) would be repaid either from the commercial lets as they come forward for Suffolk Business Park or by the commercial developer who will be appointed to bring the land forward. Traditionally, such a commercial developer would raise finance for the upfront costs associated with providing services to the site; this includes the internal access road, utilities etc.
- 3.9 In the meantime, the electricity provider has set out the programme of expenditure required to secure the electricity supply. There are two issues relating to this. Firstly, the first two payments on the programme of expenditure are required by 27 February 2015 i.e. before the NALEP loan has been confirmed or paid. Secondly, the electricity provider requires a commitment to the programme of works and therefore a commitment to fund these works to enable it to commence. Officers are working with the electricity provider to change the date of the first two payments until after 20 March 2015 so that there is certainty about the loan arrangement. However the worst case scenario is that the payments will be required by 27 February.
- 3.10 The total cost of the electricity infrastructure works is £4,628,871. Taylor Wimpey has already paid £100,000 in the form of a refundable deposit. Taylor Wimpey has allocated a further £1.4m towards electricity infrastructure which, on the current programme, would be payable from July 2015. This would leave a figure of £3,128,871 to be funded.

- 3.11 The electricity works are proposed to be phased and therefore the provider would also require payments to be provided in stages. The first payment of £100,000 has already been paid by Taylor Wimpey. The second payment amounts to £129,786 and is required to be paid by 27 February 2015 (as a worst case). The third payment of £226,400 is required in Quarter 2 of 2015. These two outstanding payments equate to £356,186 which Council is being asked to approve immediately. This sum can be paid from the existing £3m allocation of funding approved by Council on 23 September 2014 (referred to above in paragraph 1.1) if the loan from NALEP had yet to be remitted to the Council.
- 3.12 By the time the fourth payment is required (Quarter 3 2015) the loan from New Anglia may be in place or Taylor Wimpey may be able to contribute from its £1.5m total allocation. There is a risk that NALEP either does not approve the Growing Places Fund application or that it is not in place in time. There is also the risk that Taylor Wimpey would not be in a position to commit any of the £1.5m of its funding. In this instance, SEBC would be committed to the total £4.5m cost of the infrastructure works subject to the satisfaction of the Section 151 and Monitoring Officers. This total cost is recoverable from the occupants of the commercial space as it comes forward over time. The usual contractual provision is that infrastructure costs are the first elements to be repaid.
- 3.13 Officers are commissioning consultants to ensure that the costs and timings set out by the electricity providers are appropriate for the proposed development in the area. The consultants will also help to frame any agreement with the electricity provider to ensure that the funding provided can be recovered by future developments, outside of our control and the beyond the land owned by Taylor Wimpey. The commercial land owned by Taylor Wimpey is to be the subject of an agreement between SEBC and Taylor Wimpey and therefore the commercial lets on this part of the site will be within our control and we will be able to recover our costs from this part of the site.
- 3.14 To enable the electricity works to be secured, Members are requested to commit to the programme of electricity works at a cost of £4.5m and to authorise the temporary forward funding of payments totalling £356,186 to be repaid when the loan is in place.

4. Specialist advice

- 4.1 There are a number of areas of specialist advice that are required in connection with this project to make sure that SEBC is working within the law and maximising its best consideration. The following table sets out the requirement and cost of each element. Fee proposals are awaited in the case of electricity advice, land referencing and VAT advice however the total request for this advice is a maximum of £150,000.

No.	Responsibility	Cost
1.	Commercial structure; Stamp Duty Land Tax	£50k
2.	Specialist legal advice	£50k
3.	Land Acquisition advice (see report *)	£14k
4.	Land valuation	£4k
5.	Electricity advice	TBC
6.	Land Referencing	TBC
7.	VAT	TBC
Total		£150k

5. Finance/Budget/Resource Implications

- 5.1 In the worst case scenario, if Members are minded to agree the recommendations above, SEBC will need to commit a total of £4.5m towards this project within its capital programme. Officers are working with the electricity supplier to extend the deadline for the first payments so that there is certainty of the loan from NALEP before SEBC commits to the £4.5m programme of works.
- 5.2 SEBC will be taking responsibility for repaying the Growing Places Fund loan including the interest payments. The funding for the electricity works is required in phases and would be paid back as and when the development comes forward.
- 5.3 The specialist advice fees are a necessary element of the process of investing in a complex matter such as this project. The costs can be paid out of Council reserves in the first instance however there may be opportunities to capitalise these costs as the project progresses. The external support is required to provide specialist support to ensure the Council achieves a commercial consideration for our investment. These costs are typical costs associated with this type of development and with the exception of the land acquisition costs (which will be recoverable by the development), will be set against the investment return achieved from Suffolk Business Park.