

## **Communities Overview and Scrutiny Committee 9 February 2012**

### **Transport Infrastructure for Major Development**

#### **Recommendations**

- (1) To consider and comment on the approach to supporting major development, set out in this report.
- (2) To agree any areas for scrutiny, as appropriate.

#### **1.0 Key Issues**

- 1.1 Major development creates pressure on existing infrastructure and services and generates the need for improved or new infrastructure and services.
- 1.2 This report discusses the procedures and funding sources for securing new or improved transport infrastructure and services made necessary by major developments.

#### **2.0 Introduction**

- 2.1 The need for new or improved transport and education provision are the two main pressures the County Council has to deal with when new development takes place. However, there is a range of other requirements that may compete for available funding, e.g. social housing, health and social facilities, fire service, libraries, police, and open space.
- 2.2 Private development has to be commercially viable. There is therefore a limit on how much private funding can be made available for public infrastructure. The amount of funding available for public infrastructure will vary with the location and nature of the land to be developed. Therefore, the County Council has to be mindful of this when seeking infrastructure improvements, making sure that such requests are reasonable and in scale with the size of the development.
- 2.3 A decision to grant planning permission is made by the relevant planning authority. For major development in Warwickshire that generally means the District and Borough Councils and the Local Planning Authorities (LPA). The LPA's are often referred to as the 'Deciding Authority,' as they must weigh up the merits of the development and the competing demands for public infrastructure when they decide on whether to grant planning permission, and what conditions and obligations should be imposed on that permission.
- 2.4 It follows therefore that the need to secure investment for transport is only one of the factors that is taken into account when planning permission is granted and planning conditions and obligations are determined.

- 2.5 The County Council has established a Strategic Infrastructure Group (SIG) to oversee the Council's response to consultations by Planning Authorities on major developments. The objective of this group is to ensure a coordinated response from the County Council and to enable a corporate view to be taken on priorities for investment. The Terms of Reference for the SIG are attached as **Appendix A**.
- 2.6 The SIG comprises of two groups; the Officers Group, and the Members Group, which is discussed further in Section 6 of this paper.

### **3.0 Transport in the Planning Process**

- 3.1 Most major development sites are allocated through the Local Plan (LP) or the Local Development Framework (LDF), prepared by District and Borough Councils as Planning Authority. The County Council is involved in advising the LPA's on the transport implications of major developments from an early stage of LP/LDF development. The intention of our advice is to help with the selection of sites to reduce transport impacts, maximise sustainability, and/or to select sites where mitigation is most easily achieved. However, transport is one of many factors that the LPA will take into account. The County Council is committed to supporting 'targeted growth', i.e. creating conditions for private sector growth and investment. We will look to support some strategic sites that will create wider business benefits for the wider communities and businesses.
- 3.2 Once likely sites for major developments are known, discussions with potential developers normally begin long before a planning application is submitted. These are known as pre-application discussions. This may involve detailed traffic modelling and detailed discussions about public transport and other infrastructure such as cycle lanes. A great deal of work may be done by both the developer and the County Council during the pre-application phase and the aim is that through pre-application discussions, agreed transport mitigation measures are established. During the pre-application stage the County Council works closely with the Highways Agency to ensure that the impacts on the motorway and trunk road network are considered alongside those of the local road network. Depending on the size and the location of the proposed development, the County Council will work with neighbouring Highway Authorities to ensure a coordinated response.
- 3.3 The County Council is a statutory consultee on highway and transport matters. Therefore, once the Planning Authority receives a planning application the County Council is formally consulted. However, the Developers are actively encouraged to seek pre-application advice. At this stage the County Council can agree the scope of the transport information required to support the application and look at the likely infrastructure requirements. If the required mitigation measures have not been agreed and the proposals contained in the planning application are considered unacceptable it may be necessary to object to the planning application. As a statutory consultee the LPA have to take our response into account and include it in their final reports. However, the LPA can decide not to follow our advice and grant permission in spite of our objection.

- 3.4 When the Planning Authority grants planning permission, planning conditions or planning obligations may be imposed on the permission. It is through these planning conditions or obligations that highway and transport infrastructure is secured.
- 3.5 The above process is illustrated in **Appendix B** through a description of the procedures for the recent Gateway Sustainable Urban Extension Application in Rugby.

#### **4.0 Developer Funding**

- 4.1 At present, if highway and transport infrastructure and services are to be funded by developers, this may be achieved through agreements using Sections 38, 184 or 278 of the Highways Act, and Section 106 of the Town and Country Planning Act.
- 4.2 A Section 38 agreement is the mechanism which allows developers to build and then have adopted infrastructure on land they own for the development, e.g. estate roads. Normally the developer builds the infrastructure, which is technically approved and supervised by officers of the County Council, and later asks for it to be adopted, at which point responsibility for maintenance passes from the developer to the Local Authority. The design and specification requirements for infrastructure that is to be adopted is set out by the County Council in design guides.
- 4.3 A Section 184 or 278 agreement is a mechanism whereby infrastructure is built on the existing public highway, usually to connect the application site to the existing public highway, e.g. a new roundabout. Such work is normally fully funded by the developer but designed and built by the County Council. Highway Works agreements are the preferable method for securing large Civil Engineering works directly related to a development site. The main advantage of this method is that the developer bears all of the cost and there is no risk to the County Council.
- 4.4 There are many cases where expenditure on infrastructure or services remote from the development site is required to mitigate the impact of a development. Examples of this are provision of subsidised bus services, improvements to remote highway junctions, and traffic calming on existing roads around a development. Funding for remote infrastructure is currently secured through S106 agreements which may be with one or more developers for a particular piece of infrastructure. S106 agreements are therefore specific about what is being provided and when the money must be spent by. If funding is not spent by the end date of the agreement it may have to be returned to the developer.
- 4.5 Section 106 planning obligations must comply with the following three tests as set out in the Community Infrastructure Levy Regulations 2010:
1. Necessary to make the development acceptable in planning terms.
  2. Directly related to the development.
  3. Fairly and reasonably related in scale and kind to the development.

- 4.6 The Section 106 commonly secures sums of money, either individual contributions or pooled, to be spent by the County Council to carry out specific improvements. There is a certain element of risk here, if costs exceed the amount secured then the County Council will be responsible for the shortfall. To mitigate this, the County Council uses robust estimates for the value of the works being carried out which include contingency elements.
- 4.7 In future some funding for infrastructure and services remote from a development site could be secured through the Community Infrastructure Levy (CiL). Unlike S106 funding, the CiL collected from individual developers is not tied to specific infrastructure. Also whereas S106 funding tends only to be collected from development above a certain size, CiL may be collected from all development down to a single house.
- 4.8 CiL will be set by the Planning Authority; in Warwickshire this would be the District and Borough Councils. The level of CiL will be determined by factors such as commercial viability of development, infrastructure requirements, and the need to encourage development. The level of CiL is likely to vary across the County and could vary within District Council areas. CiL may be collected from all types and sizes of development.
- 4.9 A number of groups and organisations will be competing for the funds available through CiL. Therefore, S106 agreements will still be required for securing site specific improvements and funding.

## **5.0 Other Funding Sources**

- 5.1 It may not always be commercially viable for new development to fund all of the transport infrastructure and services that are desirable. When this is the case the following may apply:
- (1) The County Council could object to the development on highway grounds and advise the planning authority not to grant planning permission. It is for the Planning Authority, or possibly a planning inspector following a public inquiry, to make the final decision in these circumstances.
  - (2) The benefits of allowing the development to proceed despite a shortfall in transport provision may justify acceptance of the transport impacts e.g. to enable development of a brownfield site or an important employment development which may provide much needed jobs in an area.
  - (3) The wider public benefits may justify investment of public funds either as permanently sunk funds or as temporary investment if the issue for the development is cash flow rather than long term value released by the development.
- 5.2 There are a number of potential public funding sources for capital investment but fewer options for revenue funding of public transport services. Examples of grant funding are:

- (1) European Regional Development Funding (ERDF) is available in parts of Warwickshire and may be available as match for enabling infrastructure in those areas.
  - (2) Temporary competitive bid for grants may be available from time to time e.g. Regional Growth Fund (RGF)
  - (3) Major scheme funding may be available e.g. NUCKLE.
  - (4) Growing Places Fund. This is recently announced funding that is intended to help bring development forward where cash flow is the issue. The intention is that it is a revolving fund with repayment once cash flow is available from the development. The Coventry and Warwickshire LEP area has been given an indicative allocation of £8.52M.
- 5.3 For housing development, Government are offering funding through the New Homes Bonus, based on a fixed amount per new home built. Upper-tier Local Authorities receive 20% of this funding, but it is expected that our main revenue grant will be top sliced by a significantly higher amount to fund the scheme. Therefore, any funding we do receive will be needed to meet the resulting shortfall. The remaining 80% of the grant goes to the District Councils, but they could choose to make some of this funding available for essential infrastructure if appropriate. The amount of funding is, however, likely to be modest with many calls on it. For example, in Warwick District there may be 550 homes per year built and each will attract circa £1400 funding. Warwick District predicts that if 550 new homes per year are built they will be collecting about £2M per year by 2015-16.
- 5.4 The County Council could choose to borrow funding to help fund infrastructure using Tax Incremental Financing. Tax Increment Financing (TIF) allows local authorities to retain the increase of business rates in a tightly defined geographic area, (i.e. that above the existing baseline of business rates generated in the area). Local Authorities can then work with partners and stakeholders to borrow against this expected future growth in business rates in order to finance the development of the site (i.e. infrastructure works). Local authorities have not been able to undertake TIF schemes in the past, as new legislation is required to enable the retention of business rates. It is likely that the Government will only initially allow a limited number of TIF schemes across the country, and strong business plans will be required for the proposed schemes.
- 5.5 More widely, the Government are also legislating to fundamentally change the allocation of business rates, proposing that Local Authorities should keep a proportion of the growth in total business rates income across the whole of their area above a certain threshold. The current proposals published by Government are for 80% of any growth in business rate income to be retained by the District and Borough Councils, meaning that WCC will only retain 20% of any growth in business rates generated across Warwickshire. It must be highlighted that this is not new money – rather it replaces the existing funding received through redistributed business rates from a national pot. However, should local areas see significant and sustained business growth above the national average, then they are likely to see an increase in overall income.

This income would not be ring-fenced, and there is no guarantee that it would be spent on investment in infrastructure to support or facilitate economic growth. As the County Council will only retain a small proportion of any increase, it is unlikely that this will be sufficient on its own for additional transport and major infrastructure investment. More guidance and regulation on business rates retention is due to be published early in 2012.

## **6.0 Role of Members**

6.1 Responsibility for the whole of the process for responding to consultation on planning applications and negotiation of funding and works agreements with developers is delegated to officers. Under the Council's Scheme of Delegation it is:

- (1) The Head of Sustainable Communities who has the power to respond on behalf of the County Council in relation to any proposal for development, made or determined by another body (Delegation 1).
- (2) The Strategic Director for Resources who has the power to enter agreements in relation to the execution of highway works or improvements or agreements regulating development or use of land under Sections 184 and 278 of the Highways Act 1980 and Section 106 of the Town and Country Planning Act 1990 (Delegation 18).

6.2 However, for large developments such as the Mast Site in Rugby, significant discussion and consultation is carried out with Members to inform responses that will be made by officers under their delegated powers. For smaller developments, the practice is generally that Members are not consulted due to the mainly technical nature of the matters involved and their smaller impact. If officers judge that particular circumstances suggest consultation with a local member is advisable for a smaller development, this may be carried out.

6.3 If capital schemes arising from agreements described in paragraph 6.1(2) are to be implemented by the County Council, it is necessary for those schemes to be formally added to the Council's capital programme. This requires Cabinet approval before contracts are let. If capital funding for schemes is required in addition to developer funding, it would also require Cabinet or Council approval in accordance with Council Standing Orders.

6.4 As mentioned in paragraph 2.6 there is a Member Group connected to the Strategic Infrastructure Group. At present, this Member Group comprises Councillor Alan Cockburn, Councillor Richard Chattaway and Councillor Jerry Roodhouse. The Members Group provides direction for the Officers SIG Group with regards to infrastructure delivery for major development sites, especially when there are competing demands for a finite set of resources, and WCC need to prioritise their call on these resources to ensure developments are viable.

## **Background Papers**

None.

## Appendices

Appendix A – Strategic Infrastructure Group terms of reference

Appendix B – Securing the Infrastructure requirements for the Gateway Sustainable Urban Extension in Rugby

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### Terms of reference for the Strategic Infrastructure Group

#### Purpose

The Group will take a strategic view on the requirements for infrastructure and provide guidance on the County Councils priorities required to serve new developments.

#### Membership

Louise Wall - Head of Sustainable Communities, CO. (Chair)  
Kushal Birla - Head of Customer Service, RE  
Steve Smith - Head of Physical Assets, RE  
Chris Egan - Project Manager, CO  
John Betts - Head of Corporate Finance, RE  
Caroline Sampson - Heritage & Cultural Services Manager, CO  
Mark Gore - Head of Service - Learning and Achievement, PE  
Roger Newham - County Transport Planner, CO  
Neil Benison - Principal Highway Control Engineer, CO  
Jasbir Kaur - Strategic Planning and Development Manager, CO  
Ciaran Power - Planning Officer, CO (Clerk)

#### Responsibilities

The Group will have the following specific responsibilities:

- (1) Ensure that the views of the County Council are presented as a single response/co-ordination of views on major developments to the District and Borough Councils.
- (2) Follow through "One Council - one view" principles to identify priorities, resolve conflict on infrastructure between competing services and set out priorities of infrastructure for major developments.
- (3) Provide strategic (Countywide/joined up) guidance on new developments that the shape our services including issues such as:
  - Co-location - To provide a lead on who, how, which services, costs, relating to major sites.
  - Best fit (use of land and buildings) services for the locality i.e. relocation of some services.
  - Provide guidance on Working with Partners and delivery mechanisms.



The Group will also provide a strategic policy lead on future keys areas of work and these include:

- (1) Community Infrastructure Levy/or its replacement - the Tariff.
- (2) The new duty on the County Council to undertake Infrastructure Planning for the County area.
- (3) The Group will keep under review the impact of any new emerging policies.

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### Securing the Infrastructure requirements for the Gateway Sustainable Urban Extension in Rugby

As part of their Local Development Framework (LDF) Rugby Borough Council (RBC) identified two named sites to cater for the growth required in the plan period. These sites were two Sustainable Urban Extensions (SUE). The first was the Rugby Mast site to the east of Rugby and the second, to the north, was the Gateway Site.

This example is based on the Gateway SUE, S106 negotiations recently completed. However, this approach will be applied to the Mast site as well.

The Gateway SUE will provide 1300 new homes and 31 hectares of employment land.

The County Council's first contact with the Gateway site was through RBC's emerging Core Strategy. Using the Council's Strategic Highway model for the area, the following high level infrastructure requirements, for the Gateway site, were identified:

- (1) Provision of direct, frequent bus services between site, Rugby railway station and town centre £916,000 - £1m **Critical**
- (2) An improvement to M6 Junction 1 (A426) and the Central Park Drive roundabout £700,000 **Critical**
- (3) Provision of appropriate access to/from the site onto the A426 Leicester Road £250,000 **Critical**
- (4) Provision of a dedicated cycle link between the site, the railway station and the town centre £250,000 - £500,000 **Critical**
- (5) Provision of a comprehensive cycle network to link the residential and employment areas on the site with key facilities such as schools, health centres and food stores £250,000 **Critical**
- (6) Provision of School Buses £100,000 **Desirable**

Some of these can be delivered internally as part of the site and connections to the public highway, via Section 38 and S278 Agreements respectively. The remainder would be included as contributions via the S106 Agreements.

Also at this stage the Council looked at areas on the Highway Network which were affected by both the Gateway Site and the proposed Mast Site. This allows for

pooled contributions to be identified and secured in the agreement. The areas identified were as follows:

- (1) Russell Heim Way Gyratory – Signalisation £750,000 Critical
- (2) Improvements to town centre including new pedestrian crossings on Evreux Way; Church Street; Railway Terrace; Albert Street; Regent Place corridor and full pedestrianisation on part of North Street and surrounding Clock Tower £868,600 Desirable.
- (3) Improvements to the junctions along the A426 Leicester Road between M6 Junction 1 and the town centre, including Avon Mill roundabout Approximately £7m Critical.

As the application progressed through the Core Strategy process, Planning Applications were submitted for the site. This allowed the Council to look at the implications of the highway impact in more detail.

A more detailed and agreed highway model was used to assess the full impacts of the site. The impacts demonstrated in this modelling were compared to the existing situation and identified further areas of improvement. This exercise also looked at the phasing of the development and identified trigger points for the contributions to be made.

To date only the first phase of the development, 239 houses, has been granted planning permission, the associated agreements with this phase are as follows:

- (1) Southern Access to the site, 2 number Toucan Pedestrian Crossings and bus stops including shelters on the A426, secured via Section 278 Agreement.
- (2) Phase 1 of the internal Spine Road and estate layouts, secure via Section 38.
- (3) Section 106 Transport Contributions of over £850,000.

Internal consultations will continue as the remainder of the site comes forward, seeking to secure the identified highways and transportation requirements.

The process for securing S106 Transport Contributions for major schemes can be summarised as follows:

- (1) Strategic modelling used to identify high level infrastructure improvements
- (2) Detailed modelling confirms above and details site specific improvements.
- (3) Internal consultation with SIG, two way process, reporting to group outlining initial level of contributions being sought and direction into further areas to be examined.

- (4) Internal consultation with various WCC groups and teams, covering Public Transport, Rights of Way, Cycling, Safety etc.
- (5) External consultation carried out by the developers, with local groups including Town and Parish Councils, user specific groups such as cycling or rambling associations.

During this process representations are also made by individuals responding to the planning consultation either directly or through their local Members.

Using the above process and the detailed modelling work carried out as part of the Transport Assessment the County Council identified and secured, via highway works agreements and S106, appropriate transport and highways infrastructure, attempting to make planning applications acceptable in terms of highways, transport and sustainability.