

Rother District Council

Report to	-	Cabinet
Date	-	1 July 2019
Report of the	-	Executive Director
Subject	-	Residential Development at Blackfriars

Recommendation to COUNCIL: That:

- 1) the Council develops a Joint Venture model with a Registered Provider to deliver residential units; AND

It be **RESOLVED:** That:

- 2) the Council accept the funding offer from Homes England as attached at Appendix 2.
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Head of Service: Ben Hook

Lead Cabinet Member: Councillor Clark

Purpose

1. The purpose of this two-part report is to recommend a strategy for delivering a new housing scheme on a site known as Blackfriars in Battle, with the Council being actively involved in its development.
2. Part one focuses on the grant funding offer the Council has received from central Government to deliver the road infrastructure necessary to facilitate development, while the second part recommends a mechanism through which residential development could be brought forward.

Introduction

3. The site known as Blackfriars has a long history, with the principle of development on this site being accepted for many years. In 1967 part of the site was allocated for housing in East Sussex County Council's Battle Draft Town Plan, and in 1972 Battle Town Plan and Town Centre Map the site was also shown for residential development. Blackfriars was allocated in Rother District Council's (RDC) 2006 Local Plan to provide at least 220 dwellings.
4. The site is approximately 16 hectares (40 acres) in size (see Appendix 1), and RDC owns just over 50% of the land (green). Three other parcels of land are in separate, private ownerships (blue, yellow and orange).
5. The Council's Planning Core Strategy (2014) identified a need for 475-500 new homes to be delivered in Battle over the plan period (until 2028), assuming that a proportion of these homes would be delivered on the Blackfriars site.

6. As outlined in the previous report (Cabinet Minute CB18/10), past attempts to develop Blackfriars have been unsuccessful, principally due to many constraints including complex ground conditions, and the need for costly road infrastructure.

Housing Infrastructure Fund (HIF)

7. The Housing Infrastructure Fund (HIF) is a Government capital grant programme administered by Homes England (HE), an executive non-departmental public body sponsored by the Ministry for Housing, Communities and Local Government (MHCLG). This programme is intended to help deliver new homes in England by awarding grant funding for new infrastructure that will unlock development sites.
8. In February 2018, the Council was informed that it had provisionally been awarded £3.24m from this fund. Given the complex ground conditions and site constraints, the HIF grant is integral to building the costly road infrastructure which will enable residential development to come forward on this stalled site.
9. In December 2018, the Council received a grant award letter from HE confirming the HIF allocation, laying out the conditions of the funding. Like all Government subsidy, HIF allocations are subject to conditions, some of which must be satisfied prior to signing a funding agreement, and some before drawing down any grant funding.
10. The conditions are bespoke to each individual application, and are set by HE as part of the process which moves an offer from provisional to formal. These conditions and associated assumptions could be challenged, and were subject to negotiation with HE.
11. Many of the conditions contained within December's offer were unacceptable to the Council, with some likely to stymie progress at the site, with particular regard to the ongoing negotiations with the other landowners and viability.
12. Following further dialogue, HE has provided an alternative offer which acknowledges the site constraints and recognises the viability gap. There is an expectation from HE that any surplus made over an agreed developer's profit margin must be recovered by the Council as the development progresses. This money will be retained by the Council and ring-fenced to be used to facilitate additional housing development within the district.
13. These pre-commencement conditions contained within HE's offer are now acceptable (attached at Appendix 2), and it is recommended that the Council accepts the grant funding award.

Planning Position

14. As outlined in the previous cabinet report (Cabinet Minute CB18/10) it was necessary for the Council to demonstrate progress towards Planning Permission being granted for the new road infrastructure to give greater certainty of delivery.

15. In order to demonstrate that the proposals for new road infrastructure are appropriate, it was necessary to carry out a masterplanning exercise to demonstrate how the neighbourhood road, and the different parcels of land relate to each other, and how the site can accord with, and deliver against Planning Policy requirements.
16. A Planning application, supported by an illustrative Masterplan outlining the principles of residential development across the site has now been submitted and is awaiting determination. This application informs residential development on the site and will decrease risk, providing necessary certainty to the landowners, including the Council, to deliver their respective housing schemes.
17. Should it be approved, the planning application will allow the construction of the road to begin in advance of the residential development, which will be subject to further detailed design, and a second planning application.

Options for Delivery

18. The HIF offer expects that all landowners sign up to a collaboration agreement, committing to work jointly to utilise the new road infrastructure for unlocking their sites. Alternatively, the Council may seek to acquire parcels of land on this site to ensure delivery. Discussions with landowners are ongoing and a further report will follow.
19. The options for delivery outlined below are applicable to Rother's own landholding, capable of delivering 120-130 homes, or to a larger scheme resulting from land acquisition. The principles will remain the same, with the quantum of units delivered being the major variable.
20. Through the planning and master planning process, the Council has undertaken site investigation and surveys, utilities and services enquiries, and specialist consultancy work to decrease risk this site as far as is possible. Undertaking this due diligence has informed the Council's feasibility studies, giving an idea of the project's viability.
21. The masterplanning exercise has allowed the Council to outline its regeneration ambitions and development priorities, including the provision of Affordable Housing, and design standards in keeping with the emerging High Weald Design Guide, appropriate for this historically important site which sits within the Area of Outstanding Natural Beauty.
22. There are two vehicles for delivery, which are:

Option One: Joint Venture (JV) with development partner, likely to be a Registered Provider (RP)

Option Two: Direct delivery through the procurement by RDC of a main Contractor and professional team with delivery via Design and Build (D&B) contract

Option One: Joint Venture

23. A JV is a commercial alliance between two or more separate entities that enables them to share risk and reward.
24. This approach has been used by other local authorities who have wanted to bring in the resources and expertise of a developer, without ceding control via a traditional development agreement.
25. Often these are limited liability partnerships (LLPs) on the statutory footing that the main objectives being regeneration rather than commercial, and are on a 50/50 arrangement. That means that the Council's land contribution be matched in capital by the partner. This 50/50 equity is then reflected in the share of decision making, and returns.
26. Given the size of this project, the Council will have to carry out a form of public procurement exercise before entering into a JV. Legal advice is currently being sought to confirm this point.
27. A JV would provide an opportunity for the council to work in partnership with a preferred Registered Provider (RP) with the view that our strategic priorities are closely aligned. This will allow the Council to strengthen partnership working across the district, with a focus on delivering other sites which include the provision of much needed affordable homes, necessary to meet our local housing need.

Benefits:

- Council remains involved in development and can advocate delivery of regeneration aims.
- The cost of funding the scheme can be shared. The land value will be the Council's buy-in to start the partnership.
- Financial risks are shared between both parties.
- There is the opportunity to learn from and gain experience from established developers, and to build confidence in the Council's capacity to develop in its own right.
- There is an opportunity to buy into a developer's existing supply chain and to realise maximum value.
- The partnership could be extended to cover other projects, allowing the Council to play an active role in bringing forward stalled sites and meeting affordable housing targets.

Risks:

- Establishing the JV will be subject to Public procurement procedures which will impact on the programme for delivery
- Entering into JV may be a lengthy process which could increase timescales for delivery
- The capital receipt generated from the project will be deferred until practical completion.
- Some control is handed over to the developer, reducing the input from the Council.
- Lower financial return.

Option Two: Council-led Design and Build

28. The Council could put together a design team made up of an Architect and Employer's Agent (EA) to obtain Planning Permission for the residential units.
29. Once the Planning approval is in place, the Council would let the construction contract to a main contractor to deliver the scheme using a JCT Design and Build contract, or similar.
30. Using the planning permission and associated site-investigation reports and consultancy advice, a set of Employer's Requirements would be compiled and the scheme tendered to a selection of main contractors.
31. Once appointed, the main contractor would directly appoint the Architect and Structural Engineer required to develop the design further. The Employer's Agent would remain working directly for the council acting as the Contract Administrator for the Design and Build contract. The contractor would therefore take on the main construction risk in terms of detailing, design and programme in return for a lump sum.
32. This is the approach adopted by most small developers as it provides the least amount of construction risk and enables the appointment of the required professional team as and when needed. Sales risk would remain entirely with the Council.
33. Setting up the design team, and letting the construction contract would both be subject to Public Procurement procedures.
34. The process would be managed internally, meaning the Council would retain control over all aspects of the development in terms of design, tenure and timescales.

Benefits:

- The Council retains full control of this regeneration project, both in terms of timescales and quality.
- Stronger financial return.
- Council's construction risk exposure reduced with technical design development and site management sitting with the main contractor.
- A professional team would be established to offer technical assistance, advice and support, filling any gaps in expertise.
- Council stand to benefit from the main contractors' buying gain, through their regular supply chain.
- Opportunity to roll this model out across the District, and to agree project-specific outcomes to meet broader Corporate priorities such as the delivery of affordable homes and/or homes to be used as temporary accommodation for homeless applicants.

Risks:

- Council would need to fund the scheme through borrowing.
- Council would be exposed to higher preliminary costs and the main contractor's overheads and profit.
- Council would retain the full sales risk and costs associated with sales/demand.

- The Organisation has little experience of independent development so may struggle to build confidence in or buy-in for the project.
- The Council will be directly exposed to the vagaries of the housing market.

Selling the RDC Land to a Developer

35. A previous Cabinet report (Minute CB14/15) approved selling RDC land holding under an options agreement to an adjacent landowner. This was never finalised as the purchaser withdrew at a late stage.
36. While selling the land was an option previously to raise capital receipts it is now recommended that this option is discounted as it will leave the Council with no control over delivery timescales. Furthermore, if there are viability challenges the Council may not see the affordable housing on this site being brought forward.

Preferred Option

37. Delivering the site through a JV gives the Council more certainty over delivery, and allows a level of control while sharing risk. Given the financial position of the Council, this option is safest, and goes some way towards mitigating concerns around project funding and risk.
38. This option allows for the Council to partner with an established Registered Provider, to gain skills and experience which can be rolled out onto other development projects.
39. A JV with a Registered Provider will also present an opportunity to create a strategic partnership to help deliver against key corporate priorities.
40. Design and Build gives the Council the biggest return and the greatest control over the project, but carries the most risk and requires the Council to wholly finance the project. While this option may be best for delivery on other, smaller sites within the Council's ownership, it may not be appropriate for a site of this size given the Council's financial position and the limited design and build experience within the organisation.
41. Given the risks involved with Design and Build it is recommended that, on this occasion, the Council pursues a JV to deliver this project, and begins the process of procuring a Registered Provider with whom it can partner.

Next Steps

42. If the Council supports a JV then legal advice is required to establish whether a Public Procurement exercise is necessary, and the nature of this exercise. It is essential that the partnership meets the Council's aspirations in terms of policy, quality and timescales so a robust brief must form part of the tender documents.
43. The brief should be informed by the Council's planning and corporate priorities for this site, and will form the basis of the JV model. This JV model could then be rolled out onto other corporate development projects across the District

where the balance of risk outweighs that which the Council may be willing to take by delivering a scheme directly.

Conclusion

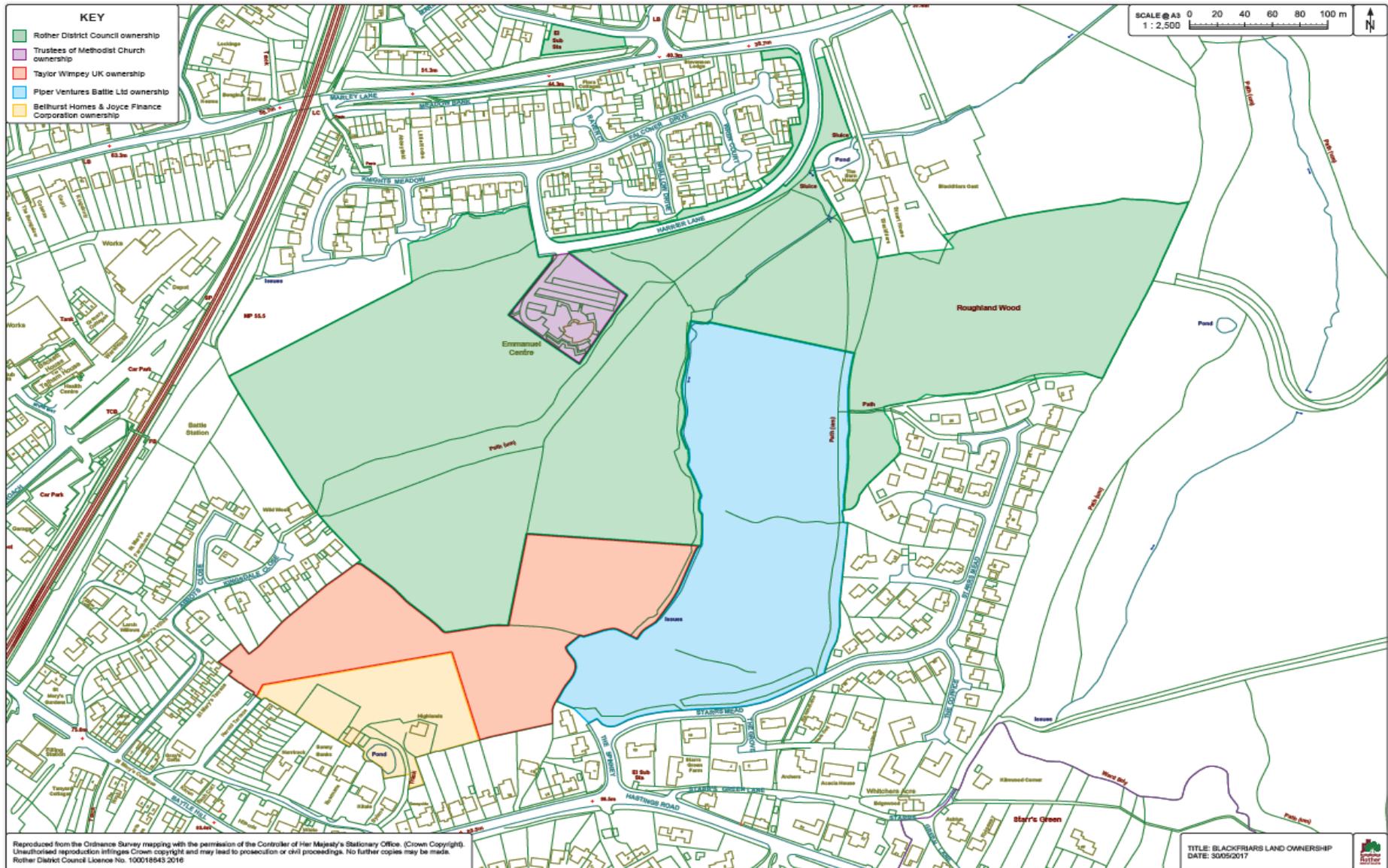
44. Members are recommended to resolve that the HIF offer be accepted and authorise the Executive Director to enter into a funding agreement.
45. Additionally, Members are recommended to resolve that the Council continues to take an active role in progressing this site, and establishes a JV through which residential development can be delivered

Dr Anthony Leonard
Executive Director

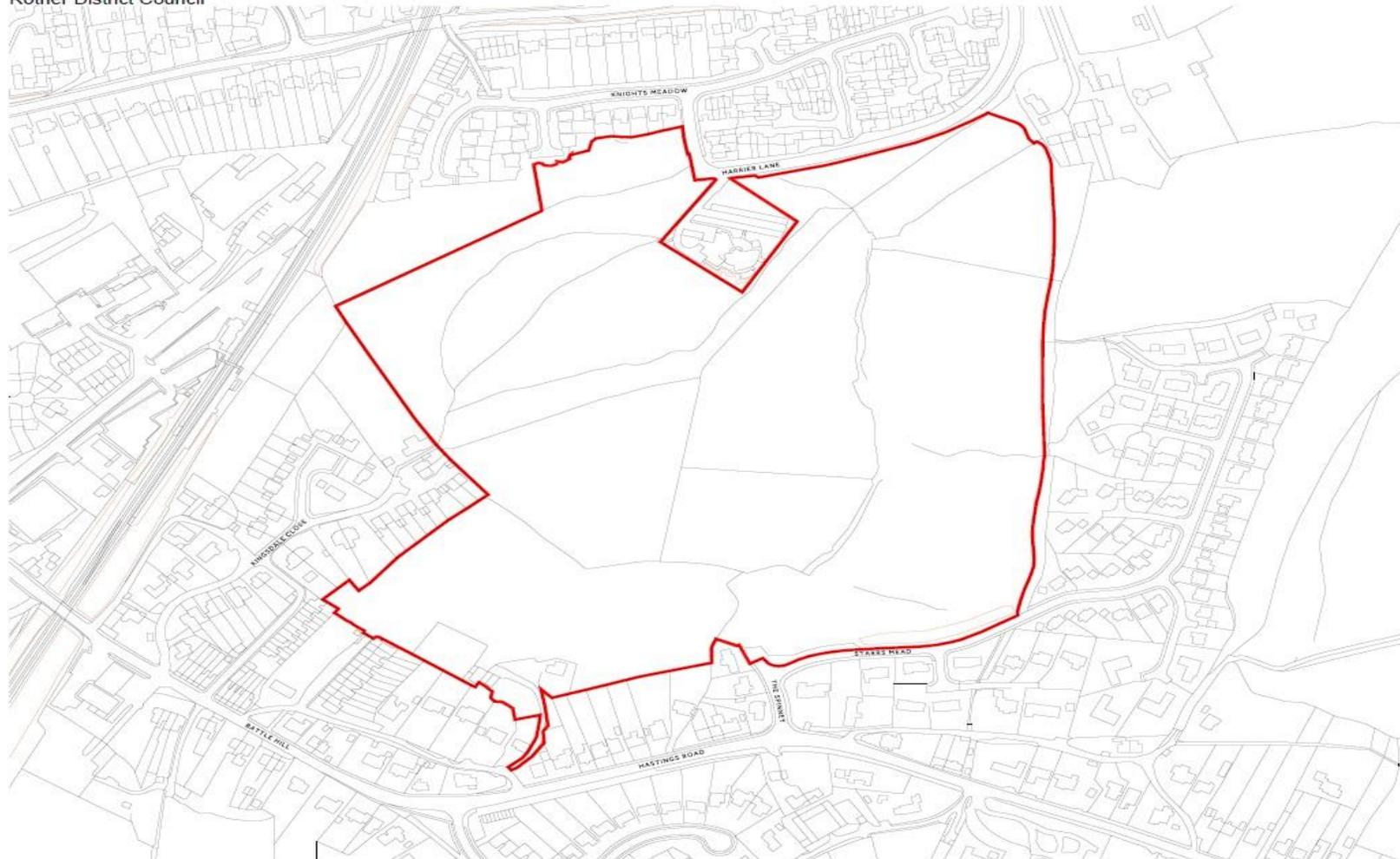
Risk Assessment Statement

This site has not come forward for many decades due to its constraints. By not accepting the HIF grant and not driving forward the development the site will remain stalled and homes not forthcoming for future years.

By accepting the funding this places an obligation on the Council to deliver the scheme ensuring, sufficient staff and financial resources are available to deliver the project. Failure to meet the HIF grant conditions may result in having to return the grant funding meaning that investment to date is not recoverable.



Rother District Council



Proposed Masterplan, Land at Blackfriars, Battle

NET/06
 © The Scale
 Result of discussions, views and comments
 Note all dimensions on site plans concerning any work on site or
 planning applications.
 All materials, quantities and construction are to comply with the
 relevant British Standards, Codes of Practice, and applicable
 specifications. Measurements are from the 2015 Ordnance Survey
 For all specialist work, see relevant drawings.
 This drawing and design are copyright of Clague LLP
 Registered Architect

No.	Date	Description
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Project Title
Rother District Council
Proposed Masterplan,
Land at Blackfriars,
Battle

Drawing Description
Site Location Plan

Scale	Drawn for
1:1250 @ A1	SG
Date	Checked by
March 2019	SW

CLAGUE ARCHITECTS

42 Ridgely, Canterbury
 Kent CT1 3BB | 01227 762080
 1 Kingsbourne Court, Luton Road,
 Harpenden, Hertfordshire AL5 2SL | 01843 788100
 6, Clague Street
 London SE1 1UF | 0202 887 8112

CANTERBURY LONDON HARPENDEN

Drawing Number
23817A/01

HOMES ENGLAND: PRE-GRANT DETERMINATION CONDITIONS

Condition	
1.	Confirmation from all land owners that they will work jointly to utilise the spine road for unlocking their sites.
2.	Evidence that the spine road is essential to unlocking the sites and that most of these sites could not be unlocked through other means. Demonstrate that the chosen route for the spine-road represents a balance of best value in terms of cost to the number of homes released.
3.	Provision of a detailed strategy of how the Council is proposing to sell / procure a partner to deliver the housing site.
4.	Provision of a detailed planning strategy (including a detailed programme) for both the infrastructure and each of the residential plots.
5.	Provide written confirmation that the grant to be provided would be State Aid compliant as well as providing supporting written evidence of the independent State Aid advice received.

PRE-DRAWDOWN CONDITIONS

Condition	
1.	The Collaboration Agreement is signed and active ensuring that the delivery of the HIF funded infrastructure and the grant drawn by the March 2022 deadline.
2.	Confirmation of the number of homes that will be delivered and presentation of the masterplan to Homes England. This should include a programme showing the proposed number of housing completions each financial year from the start to finish of the project.
3.	Provision of a Report on Title showing the entire site has vacant possession and detailing any restrictions, Rights of Way, easements, covenants or any other title constraints that may impact on the deliverability of the site.
4.	Provision of detailed highways, ecology and engineering reports and a cover report to show the proposed road route is deliverable.
5.	Provision of the programme to be adopted should there be a need for Compulsory Purchase of a site, noting when the infrastructure to be funded by HIF would be completed and the HIF grant drawn within the March 2022 deadline.
6.	Preparation of a detailed cost plan (by a firm of reputable quantity surveyors) clearly identifying the cost of delivering the spine road, site preparation costs, construction costs for the homes, landscaping costs and any other related costs.
7.	1. A revised development appraisal is to be submitted. This is to include: <ul style="list-style-type: none"> • The revised costs prepared by the quantity surveyor. • Updated residential values. This should be supported by market evidence and a sales and marketing strategy prepared by a firm of estate agents. • Updates to any other development appraisal inputs e.g. s.106, CIL, fees, contingency etc. • Incorporation of the revised masterplan scheme. • To reflect the delivery programme that each landowner is proposing to adopt.
8.	Local Authority to provide a mechanism to recover the HIF funding contribution from surpluses achieved by the developers/landowners with appropriate interest charged. This should reflect a land valuation amount which should be to the satisfaction of Homes England.
9.	Commencement of the HIF funded infrastructure works by such a date that would enable the HIF grant to be drawn no later than March 2021.

10.	The Council is to provide a clear strategy detailing how the non- HIF funded infrastructure works will be delivered. Furthermore, proof that funds are in place to deliver the infrastructure works in their totality should also be provided.
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It should also be noted that the following conditions are a requirement of all grant determination agreements.

- a) The money is to be spent on capital related to the project;
- b) The scheme will deliver by an agreed date. Otherwise, Homes England can recover any unspent funding;
- c) Any costs saved or recovered are retained by the Local Authority and to be used for further housing delivery; and
- d) The Local Authority will assure Government on delivery through proportionate regular reporting on progress, as set out in the Assurance Framework.

Please note that any communications on the outcome of funding clarification are subject to Homes England approval.