

Agenda Item No. 4(b)

DERBYSHIRE COUNTY COUNCIL

**MEETING OF CABINET MEMBER – HIGHWAYS, TRANSPORT AND
INFRASTRUCTURE**

21 June 2016

Report of the Strategic Director – Economy, Transport and Communities

**SECTION 38 AGREEMENT OF THE HIGHWAYS ACT 1980 – LAND OFF
MEADOW LANE, SHIREBROOK**

(1) **Purpose of Report** To seek the Cabinet Member's approval to partially waive the requirement for a guarantee Bond to safeguard public funds with regard to the Section 38 Agreement works.

(2) **Information and Analysis** The Homes and Communities Agency (HCA) has funded the construction of a new spine road off Meadow Lane, Shirebrook to facilitate a residential housing development. HCA owns the land on which the road is constructed. Adoption of the road will be achieved by means of an agreement under Section 38 of the Highways Act 1980 between HCA, a third party developer and the County Council. It is normal policy and practice for the County Council to require a developer to enter a performance bond which will provide funding for the Council to complete the works in the event that the developer fails to complete them in accordance with the agreement.

As part of the works, the subsoil was excavated to install a new sewer. However, unsupervised backfill of the sewer along part of the new road has resulted in some doubt as to the quality of the foundation which, in turn, has given rise to doubts as to whether significant remedial works will be required prior to adoption.

To address the concern over possible future defects appearing, the Council is seeking a financial Bond from the HCA. It is proposed the Bond provides a financial guarantee for 75m of new road over which the quality of the construction is in question.

The HCA is a Government funded agency and not, therefore, subject to the same financial risks as a private company. As such, it is anticipated that any necessary expenditure on future defects in the carriageway construction, prior to adoption, would be honoured. However, resolution of any outstanding defects can be a lengthy and expensive process but can be reduced by a

financial guarantee. In view of the funding status of the HCA, it is not considered necessary to seek a Bond for the full value of the new road but rather the 75m, section of street that is in doubt.

The road layout and area of concern is indicated on Drawing No. HDC/MRH/1.

(3) **Financial Considerations** It is normal policy and practice for the County Council to require developers to provide financial security prior to commencing work to protect the County Council against the cost of having to complete the work, in the event the developer fails to complete it, in accordance with the Agreement or ceases to trade.

In this instance, as the developer is the HCA, the County Council is able to waive the requirement for a guarantee Bond for the entire works as there is negligible risk of financial insolvency. The Bond will, however, simplify the process to recoup any financial outlay of public funds and provide HCA with an added incentive to carry out remedial works in the event of deterioration of the road construction prior to adoption.

The Bond value for the affected length of street has been calculated as £113,000, based upon the Council's schedule of rates for new streetworks.

(5) **Social Value Considerations** The relevance of social value has been considered in the preparation of this report. It is considered the proposal for a guarantee bond for 75m of effected highway represents a proportionate response to the issue; protects the integrity of the Council and highway; and ensures the public will not be subject to undue disruption in the event of deterioration.

In preparing this report the relevance of the following factors has been considered: legal, prevention of crime and disorder, equality and diversity, human resources, environmental, health, property and transport considerations.

(5) **Key Decision** No.

(6) **Call-In** Is it required that call-in be waived in respect of the decisions proposed in the report? No.

(7) **Background Papers** Held on file within the Economy, Transport and Communities Department. Officer contact details – Mike Hawkins, extension 38082.

- (8) **OFFICER'S RECOMMENDATIONS** That the Cabinet Member:
- 8.1 Notes the intention to enter into a Section 38 Agreement of the Highways Act 1980 with the Homes and Communities Agency and a third party developer for land off Meadow Lane, Shirebrook.
 - 8.2 Authorises the waiver of the requirement for a Bond for the spine road with the exception of the 75m section, shown on Drawing No. HDC/MRH/1, for which a Bond of £113,000 will be provided.

Mike Ashworth
Strategic Director – Economy, Transport and Communities

