

Agenda Item No. 6(d)

DERBYSHIRE COUNTY COUNCIL

CABINET

7 December 2017

Report of the Strategic Director – Economy, Transport and Environment

**HIGHWAY WORKS AGREEMENT – A61 NORTHERN ROUNDABOUT, THE AVENUE, WINGERWORTH (HIGHWAYS, TRANSPORT AND INFRASTRUCTURE)**

(1) **Purpose of Report** To seek Cabinet approval to waive the financial bond supporting a highway works Agreement for a new roundabout on the A61 at Wingerworth.

(2) **Information and Analysis** As part of the major remediation and regeneration project at the former Avenue coking plant site, the Homes and Communities Agency (HCA) has obtained planning permission for and constructed a new roundabout junction and access on the A61.

The HCA obtained technical approval from the County Council for the new roundabout on 26 November 2014 and preparation of a legal Agreement between the Council and the HCA was commenced. Having paid the County Council an inspection fee and started works on site, the project is now complete and has been inspected by the Highway Authority's officers.

Under normal circumstances, the Council requires any highway adoption Agreement with a developer to be supported by financial security in the form of a bond. The Authority can call upon this bond to complete the highway works if the developer fails to do so. In this case, the highway works have been in place for many months and are all completed to the Highway Authority's satisfaction.

Whilst the Council could pursue the developer to Court for working in the highway without Agreement or security, the outcome of this action would be uncertain. As a Government Agency, the HCA continues to be willing to enter into the adoption Agreement retrospectively, but has asked if the need for a bond could be waived due to problems with financing the bond and because the works are now complete.

It would be preferable for the developer to complete the process under a highway works Agreement, but in order to achieve this, the Council may have

to be willing to be flexible about requiring financial security. If, for any reason the developer fails to enter into an Agreement or complete the works, the Council would be no worse off than it is at present and could still pursue enforcement action if it chooses.

In view of the fact that the works are completed to such an advanced stage and have been for a considerable period, it is proposed that once the Agreement is signed and sealed, and the final remedial works completed, the works would be adopted forthwith.

(3) **Financial Considerations** It is normal policy and practice for the County Council to require developers to provide financial security prior to commencing works to protect the Council against the cost of having to complete the works according to the Agreements. The bond for this project would have been approximately £4.1 million.

In this instance, the developer has completed the vast majority of the works in the highway without providing security. The HCA is prepared to complete all works to the Council's satisfaction and enter into the adoption Agreement as soon as possible, albeit without security. The financial risks to the Council are extremely small given that the highway works are effectively complete and the likelihood of the Highway Authority having to carry out any remedial work is negligible.

In addition, the HCA has already paid the Council's technical inspection fees of £128,800 and will meet the Council's legal fees and commuted maintenance sums as identified in its letter dated 19 October 2017.

(4) **Legal Considerations** Where development related improvement works lie within the existing publicly maintainable highway, it is a requirement that the developer enters into an Agreement under Section 278 of the Highways Act 1980 with the County Council, as Highway Authority, in order to execute the works on the County's behalf. As part of the combined Agreement, the land outside of the existing highway (shown on Appendix HA1) would be dedicated to the County Council upon completion of the works under sections 38 and 72 of the combined Agreement. The remainder of the access spine road leading into the development will be subject to future separate adoption Agreements with the developers of each phase of the development.

(5) **Social Value Considerations** Completion and adoption of the new junction will ensure that the improved highway is available for all public users in perpetuity, maintained by the Council in a safe and satisfactory manner. The developer has reimbursed the Council for its Technical Officer activity and will do so for its Legal Officer activity in connection with the Agreement, reducing the burden upon the public purse.

## Other Considerations

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

(6) **Key Decision** No.

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

(8) **Background Papers** Held on file within Economy, Transport and Environment Department. Officers contact details - Chris Allwood, extension 38582 and Graham Hill extension 38647.

(9) **OFFICER'S RECOMMENDATIONS** That Cabinet:

9.1 Notes the intention to enter into a Section 278/38 Agreement for the highway works for a new Roundabout on the A61 at Wingerworth.

9.2 Approves the proposal that, in this case, the developer be exempt from having to lodge financial security to cover the cost of the highway improvement works, subject to the content of the Agreements being as set out in this report.

**Mike Ashworth**  
**Strategic Director – Economy, Transport and Environment**



