

Council – 14 December 2023

ASHBOURNE REBORN FINANCIAL RISK UPDATE

Report of the Director of Regeneration and Policy

Report Author and Contact Details

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Wards Affected

Ashbourne North and South

Report Summary

The report summarises activity and progress related to the *Ashbourne Reborn* Grant Funding Agreements for the Highways and Public Realm project and Link Community Hub project and associated financial risks.

Recommendations

1. That completion of the Grant Funding Agreements between the District Council and Derbyshire County Council for the Highways and Public Realm project and between the District Council and Ashbourne Methodist Church for the Link Community Hub project be noted.
2. That the increased financial risk to the District Council associated with the Grant Funding Agreement for the Highways and Public Realm project, and proposed measures to help mitigate this risk, be noted.

List of Appendices

None

Background Papers

- Ashbourne Reborn Governance and Delivery Report to Council 27 July 2023
- Ashbourne Reborn Programme Board Update Reports 27 September 2023, 26 October 2023 and 12 December 2023.

Consideration of report by Council or other committee

No

Council Approval Required

Yes

Exempt from Press or Public

No

ASHBOURNE REBORN FINANCIAL RISK UPDATE

1. Background

1.1 Ashbourne Reborn is a £15.22m programme aimed at transforming Ashbourne town centre through significant improvements to highways and public realm and the development of the Link Community Hub. The programme is principally funded by the UK Government through a £13,373,509 funding allocation from the Levelling Up Fund, Round Two. The programme comprises the following projects:

Project 1: Public Realm & Highways Improvements led by Derbyshire County Council (DCC)- £8.804m

Project 2: Link Community Hub led by Ashbourne Methodist Church - £6.418m

1.2 Derbyshire Dales District Council is the Accountable Body for Ashbourne Reborn. This means that, although projects are being delivered by other delivery partners, the Council has responsibility for, inter alia:

- all financial matters (including but not limited to managing the programme budget, paying delivery partners and claiming funding from the Government to cover such payments)
- all procurement matters (including but not limited to appointment, contracts and purchases made by delivery partners)
- ensuring outputs and outcomes are achieved on time and to budget
- other compliance matters (including but not limited to equalities duties and subsidy control)
- discharging this accountability by monitoring, assuring, reporting and auditing to the Government's satisfaction.

1.3 Grant Funding Agreements are required to be completed to enable the defrayal of grant to delivery partners within the parameters set out by the Department for Levelling Up, Housing and Communities (DLUHC).

1.4 In parallel to the Grant Funding Agreement negotiations with DCC, to ensure progress could be maintained, a revised letter of intent from the District Council was issued in September to enable funding of appropriate elements of design work, subject to the Grant funding Agreement being progressed and the provision of related evidence prior to agreement of associated payments.

1.5 The process of reaching agreement took longer than anticipated with both delivery partners, and Grant Funding Agreements became the highest project and programme risk, with potential impacts on defrayal of grant payments, contractor procurement and delivery timeframes. They were therefore prioritised by District Council officers and partners in order to mitigate these risks.

- 1.6 A general progress report on the *Ashbourne Reborn* programme is set out in the Ashbourne Reborn Programme Board papers for 12 December meeting.

2 Key Issues

- 2.1 Delegated approval was granted at the November 2022 C&E Committee meeting to enable the approval of the Grant Funding Agreements (GFAs) by the Director of Regeneration and Policy, the Director of Resources and the Director of Corporate and Customer Services. However, risks associated with each agreement, identified through associated negotiations with delivery partners, resulted in the **desire need** to seek further **endorsement approval** of **their** approach.
- 2.2 Negotiations regarding the DCC agreement resulted in potential additional financial risk to the Council. Negotiations regarding the AMC agreement identified potential delivery risks. However, following lengthy negotiations, failure to complete both agreements also carried reputational and wider financial risks for the Council with unsustainable delays to programme delivery, risking LUF grant.

Link Community Hub Grant Funding Agreement

- 2.3 Delays on the AMC Grant Funding Agreement were latterly related to additional checks required by the central Methodist Church and the need to consider the process in the unlikely event that the current Ashbourne Methodist Church (AMC) Project Team could no longer deliver the project.
- 2.4 To address this issue as far as possible, the AMC Grant Funding Agreement includes a mechanism to pass on AMC's obligations should they cease to operate for any reason and confirmation of the associated process and relevant legal entities within the Methodist Church structure has been sought. Whilst not a legal guarantee, regarding the level of risk to the Council, legal advice has indicated that the approach is considered more secure than providing a grant to a small or medium sized company in the private sector.
- 2.5 In terms of financial risk associated with the AMC agreement, the following is noted. Whilst clawback provisions are excluded within the MOU with DLUHC, Government reserves the right to make appropriate adjustments to payments or withhold payments to the Council where significant concerns over delivery exist. AMC has accepted the financial risks associated with the delivery of the project. The GFA requires that grant payments will only be made against eligible expenditure incurred on the project. Should AMC be unable (for whatever reason) to complete the project, the GFA provides for the succession of obligations via the connexional structure of the Methodist Church which would be pursued by the Council. Should the works ultimately remain incomplete, the Council would work with DLUHC and the Church to identify attributable outputs and outcomes from completed project phases and seek agreement to conclude the project at this point.

Highways and Public Realm Grant Funding Agreement

- 2.6 Following delays over the summer and subsequent consultation required with DCC's legal and finance teams, key points for negotiation within the Grant Funding Agreement with DCC were focussed around responsibilities and apportionment of financial risk.
- 2.7 A Chief Officer level meeting was therefore held with DCC with a view to resolving outstanding matters. During this meeting it became clear that a mechanism for sharing risk was required for the Grant Funding Agreement to be finalised, which increased the financial risk to the District Council, and required Member consideration.
- 2.8 Principles set out within the negotiated Grant Funding Agreement reflect that DCC will be responsible for day to day risks associated with their management of the highways and public realm project, including management of the project within the agreed budget. However, if there are unavoidable cost overruns following escalation of the risks through the required governance processes and exhaustion of alternatives, DCC will accept the financial risks associated with highways, reflecting their statutory responsibilities. Following the same principle, the District Council will accept financial risks associated with public realm. It should be noted that the GFA sets out specific steps with the aim of managing risks of cost overruns as the project progresses through agreed management processes.
- 2.9 Unavoidable financial risks are likely to be associated with unforeseeable issues such as extreme weather events that could result in additional costs from contractors being unable to work on site or damage to exposed work areas, or the discovery of previously unidentified objects underground during construction. Subsequent de-scoping of later elements could help to recoup such costs but, if the unforeseen event is towards the end of the construction period, there may not be sufficient appropriate elements to descope. This could result in additional costs of closing work areas and making them safe, even if such costs could be limited, for example by not completing work to the maximum intended specification. Such circumstances also mean that only the exposed work areas are at risk at any one time, which helps to limit the extent of the risk.
- 2.10 Key areas of financial risk are explored in more detail in Section 7 – Financial Implications. However, risks of unforeseen cost overruns are proposed to be mitigated by:
- Value engineering and descopeing to remain on budget, subject to agreement through the project governance structure and, where necessary, with DLUHC.
 - Costing each element of the works package, as far as practicable, and programming/phasing construction, prioritising the core elements of the works package to enable descopeing of later elements in the event of unforeseen and unmitigable events leading to cost increases. To note, this approach may be limited by priorities around traffic management and limiting disruption through the construction period as well as the need to consider cost efficiencies in delivery.

- Break clauses/early termination clause within the main construction contract, should this become necessary.
- Effective use of Early Warning Notices.
- Exploration of other funding options, reflecting where appropriate the Parties' statutory responsibilities and resources.
- In the event that the above mitigations are unable to fully resolve all cost implications of unforeseen events, DCC will have responsibility for issues relating to highways and DDDC will have responsibility for the approach re: public realm, and will work with other landowners to provide a solution (to note Ashbourne Town Council own land at Millennium Square).

2.11 There is also a conceivable risk of grant payments from DLUHC ceasing. In this unlikely event, the accountable body would bear the associated financial risks, as set out in section 7.8. However, this would be unusual and contrary to the Memorandum of Understanding agreed with DLUHC.

Approval of the Grant Funding Agreements

2.12 At a meeting on 29 November 2023, following discussion at Chairs Briefing for Council and with senior officers at the internal Ashbourne Executive Group meeting, the Leader of the Council and Chair of the Ashbourne Reborn Programme Board were consulted on the key risks remaining on each GFA in order to give an Urgent Decision to approve the finalisation and signing of the Grant Funding Agreements to mitigate the financial and reputational risks of further delay.

2.13 Approval was granted and the Grant Funding Agreements for Ashbourne Reborn were signed and completed by all parties on 4 December 2023.

3 Options Considered

Alternative approaches considered in the negotiations

3.1 Accepting all the financial risk on a project delivered by another party is unacceptable and disproportionate when considering that DCC are responsible for and will benefit from the improved highways assets and save on routine maintenance costs that would otherwise have been incurred.

3.2 Delivering the highways and public realm project independently of DCC was considered at the outset. However, the Council has previously agreed with DCC that they should be the delivery partner for the highways and public realm project within the Ashbourne Reborn programme as they promoted the highways work within the original bid, have appropriate in-house expertise, are responsible for the highways assets and there are multiple benefits and efficiencies in delivering the public realm improvements as part of the same construction contract. The Council could consider delivering the work separately but does not have the internal capacity plus an alternative approach would significantly impact on the programme for delivery which cannot be sustained. An alternative approach would still require close partnership working with DCC, permission to work on the highway and DCC

approval of the work to their assets. It would also require the Council to accept financial risks in full.

- 3.3 Ceasing to deliver the project is an option but immediately ruled out as this would significantly limit improvements in Ashbourne and vision for an improved town centre, require repayment of grant funding to date to DLUHC and result in significant reputational damage locally and with DLUHC.
- 3.4 Continue to pursue negotiations with DCC to accept more risk based on their size, cash flow and ability to absorb costs. However, this is unlikely to change DCC's position in light of known financial challenges and would result in further delay in agreeing the Grant Funding Agreement or, in the worst case, the withdrawal of support for the project by DCC.
- 3.5 Appropriate apportionment of financial risk was considered the most appropriate option in the circumstances to reflect statutory responsibilities and resources related to the improved assets. In the event that all cost management options to remain within budget have been exhausted, this will result in DCC accepting financial risks of unforeseen costs associated with highways and DDDC accepting those related to public realm. To maximise the opportunities to mitigate these risks, appropriate strategies will be adopted in the approach to phasing of works to enable descoping if unforeseen cost pressures exceed contingency during construction.
- 3.6 Regarding the decision to complete the Grant Funding Agreements, the option was considered to delay the signing of the GFAs to enable a decision at the Council meeting on 14 December 2023. However, this would have exacerbated the financial constraints for the Link Community Hub project and limited progress, it would also have delayed progress with required procurement by DCC on the Highways and Public Realm Project and presented additional challenges in progressing grant expenditure within the timeframes set out to DLUHC. Weighing up reputational and financial risks and implications for partner relations should the Council be perceived to be holding back the (already delayed) agreements, the Urgent Decision procedure was agreed.

4 Consultation

- 4.1 Consultation and engagement with partners and respective legal advisors to resolve and conclude the Grant Funding Agreements as swiftly as possible was detailed and extensive.

5 Timetable for Implementation

- 5.1 While there have been some initial challenges, programme delivery currently remains on track for defrayal of the LUF grant by quarter 3 2025/26, subject to formal agreement with DLUHC. This was set out within the Quarterly Monitoring submission to DLUHC in October 2023 in response to their request for a realistic funding profile that considered the 2025/26 financial year.

5.2 Completion of the Grant Funding Agreements will help to avoid further programme delays.

6 Policy Implications

6.1 Ashbourne Reborn is one of the Council's Corporate Plan priorities within the 'prosperity' theme. The LUF proposals are closely linked to the Council's Economic Recovery Plan and Economic Plan. They support the Corporate Plan priority of '*Prosperity*'. In particular, the proposals directly contribute to the corporate target area: *Promote investment to stimulate the economy of our market towns*.

7 Financial and Resource Implications

7.1 Cost plans have been updated for both projects within *Ashbourne Reborn* following the completion of RIBA Stage 3 design. Costs have risen considerably since the LUF bid, with much higher than predicted levels of inflation and challenging market conditions. Alongside rising construction costs and costs of materials, project fees have also increased from the original estimates prepared by the consultant bid team. Ashbourne Reborn Project Boards continue to consider value engineering, prioritisation and, as a last resort, potential de-scoping activities to remain within budget. Any resultant recommendations that could have direct or cumulative implications for commitments made to the DLUHC will be escalated to the Programme Board for consideration when known.

7.2 Whilst capital and revenue budgets and associated governance structures are in place, the financial risks associated with Accountable Body status are significant and have been assessed as 'high'.

7.3 The Link Community Hub Project Board has identified a funding gap through the latest cost analysis. Work is ongoing at a project level to explore the extent to which this can be addressed through value engineering. However, in the absence of further funding it is likely that there will need to be some de-scoping. Associated implications for project outputs, outcomes and commitments to DLUHC are not yet fully understood but the potential requirement for a formal Project Adjustment Request will be kept under review.

7.4 The requirement for delivery partners to manage costs within the available LUF budget is a key element within the Grant Funding Agreements. District Council officers continue to work collaboratively with delivery partners to manage financial challenges and risks as the programme develops. Grant Funding Agreements do not commit the Council to any further financial commitment beyond the LUF grant and agreed match funding unless otherwise agreed.

7.5 To reflect the need for financial agility, support cashflow, and adequate resourcing to underpin delivery as the Accountable Body, an Ashbourne Reborn Reserve totalling £175,000 was previously brought forward for use in 2023/24 and 2024/25. While this is not a commitment to additional funding and this funding should not be considered as extra project resource, it is

anticipated that a substantial proportion of this funding should remain available to help accelerate the response in the event of an unforeseen event impacting on public realm and is reflective of the preparation and commitment to the effective delivery of *Ashbourne Reborn* from the Accountable Body.

- 7.6 Beyond the appropriate management of budgetary constraints, the financial risk of unforeseen issues such as extreme weather events, the discovery of archaeological remains or constraints that could not be predicted must also be acknowledged. The position taken by DCC in relation to unforeseen costs increases the financial risk to the District Council, as it required an agreed approach to risk sharing to enable the Grant Funding Agreement to be completed. Sharing of such risks as they arise is proposed to be informed by ownership of the asset, with a presumption that all parties will first seek to make sufficient cost savings through value engineering or descoping. This means that, should all cost saving mechanisms be exhausted, the risk of unavoidable cost overruns related to highways will reside with DCC and those related to public realm will reside with the District Council, including but not limited to the historic Market Place and Victoria Square.
- 7.7 While it is impossible to predict the nature, extent and value of the impact of unforeseen issues, a number of scenarios have been considered to assess potential financial impact for the Council. For example, the total public realm construction cost estimates are currently approximately £3.5 million, not including fees or inflation but including some contingency. Assuming no contingency remained in a worst-case scenario, a 10% cost increase because of unforeseen issues would therefore be £350k, with 20% rising to £700k. However, all of the public realm will not be under construction at the same time, meaning that the impact of weather on an exposed site or the cost of construction delay due to external conditions would only be on part of the public realm, resulting in a proportion of the costs. In addition, if an issue is discovered or occurs early in the construction programme, there will still be an opportunity to recoup the costs by descoping later stages where practical. Further information will also be sought on the cost of delays to the contractor.
- 7.8 The other potential financial risk for the accountable body identified within the Grant Funding Agreement with DCC is the unlikely event that grant funding ceases to be provided from the Levelling Up Fund. It would be highly unusual for Government to withdraw funding during construction but, should such circumstances arise, it is proposed that break clauses or early termination clauses within the main construction contract will be used as appropriate to limit the financial impact. Any area under construction at such time would need to be made safe or completed depending on the stage of the work and costs of materials purchased by the contractor would need to be reimbursed. As grant funding payments are made six months in advance and three months in arrears, a worst-case scenario would result in funding for a three-month period of construction and the above requirements to be supported by the Council. Reflecting the current funding profile, the maximum predicted spend over a three-month period on the highways and public realm project is approximately £1.8million.

However, this is considered an unlikely scenario that would be contrary to the Memorandum of Understanding with DLUHC.

8 Procurement Implications

- 8.1 The agreed Procurement Strategy for the Highways and Public Realm Project was received at the Programme Board meeting in September 2023. The corresponding Procurement document for the Link Community Hub has also been drafted and will be presented to the next possible Programme Board following final approval at Project Board level. Delivery partners are required to follow these procedures in procuring project activity.

9 Legal Advice and Implications

- 9.1 The Grant Funding Agreements with delivery partners have now been signed. Completion of these Grant Funding Agreements will enable defrayal of grant funding against eligible project expenditure. The AMC Procurement Strategy/Guidelines and Highways and Public Realm Terms of Reference are being finalised. The legal risk is assessed as medium.

10 Equalities Implications

- 10.1 None additional at this stage, but equalities remain an important consideration for detailed design. An Equality Impact Assessment (EIA) was prepared for the *Levelling Up Fund* bid and was submitted to the C&E meeting on 29th June 2022. A further equalities assessment will be required on final scheme proposals to assess the implications of any significant changes to the project.

11 Climate Change Implications

- 11.1 None additional at this stage, but Climate Change Implications remain an important consideration for detailed design. A Climate Change Impact Assessment was prepared for the *Levelling Up Fund* bid and was submitted to the C&E meeting on 29th June 2022. A further climate change assessment may be required on final scheme proposals to assess the implications of any significant changes to the project.
- 11.2 In terms of other environmental considerations, there are potential synergies between the traffic management element of Ashbourne Reborn and the air quality considerations for the area. The Ashbourne Reborn Highways and Public Realm Design Team have been requested to support compatibility between the two work areas, with further consideration of any related opportunities at officer level.
- 11.3 Where the delivery of Ashbourne Reborn can contribute to and complement activity to improve air quality, this will be reflected in the Air Quality Action Plan.

12. Risk Management

- 12.1 The highest remaining strategic risk following completion of the Grant Funding Agreements is currently considered to be Project Costs.
- 12.2 Governance and escalation procedures are in place for *Ashbourne Reborn*, including monthly review by Project Boards to support active risk management and early identification of emerging risks.

Report Authorisation

Approvals obtained from Statutory Officers:-

	Named Officer	Date
Chief Executive	Paul Wilson	05/12/2023
Director of Resources/ S.151 Officer (or Financial Services Manager)	Karen Henriksen	05/12/2023
Monitoring Officer (or Legal Services Manager)	Helen Mitchell	06/12/2023