

North Yorkshire County Council

Business and Environmental Services

Executive Member meeting – Highways and Transportation

28 February 2023

A59 Kex Gill – Grant Funding acceptance

Report of the Assistant Director – Highways and Transformation

1.0 Purpose of Report

- 1.1 To seek approval from the BES Executive Member for Highways and Transportation in consultation with the BES Corporate Director, the Corporate Director Strategic Resources and the Assistant Chief Executive (Legal and Democratic Services) to authorise the Corporate Director Strategic Resources to accept the offer of £5,883,739 of capital grant funding from the Department for Transport in respect of A59 Kex Gill development reimbursement.

2.0 Background

- 2.1 As reporting reasoning outside scheduled committees, an emergency decision is required considering Department for Transport (DfT) offer to reimburse life cycle project development costs to date, as an amendment to understood spend profiles. To process this payment, the DfT have a grant acceptance deadline of 28th Feb 23 to enable payment this financial year 22/23.
- 2.2 The A59 is a key trans-Pennine route, which runs between Skipton and Harrogate. There is a long history of land instability and slippage above / below the A59 to the west of Blubberhouses at Kex Gill. The project diverts the highway for a length of 4km to the opposite side of valley where ground conditions are stable in a major civil engineering undertaking.
- 2.3 The project is in receipt of Full Business Case (FBC) approval from DfT which confers a £56.1m grant, a General Vesting Declaration will complete land title acquisitions on the 31st March 23 and construction contract programmed to be awarded 3rd April 23.
- 2.4 Executive on 19 July 2022 resolved: The award of the procurement to the successful tenderer be approved, subject to receipt of the DfT funding and statutory processes being completed, including the full financial assessment of the preferred bidder. Subject to those conditions being met, any decisions to proceed to enter into the contract and associated actions to be delegated to the Corporate Director - Business and Environmental Services in consultation with the Corporate Director, Strategic Resources and all relevant Executive Members.
- 2.7 Executive on 24th November 2020 approved the Department for Transport's proposed grant condition for the County Council to fund any additional costs of the Scheme over and above their grant .

3.0 DfT position

- 3.1 On the 2nd February 23, DfT sent a letter confirming A59 Kex Gill Diversion FBC approval and a grant funding award of £56.100m. In return there was a requirement for the Council Section 151 Officer to confirm acceptance of the terms of the grant offer, which was completed in correspondence of the 9th February signed by the Corporate Director Resources / Section 151 Officer.
- 3.2 On the 14th February 23 DfT sent a further letter offering to reimburse full development costs incurred by the Council to date as a payment in the current 22/23 financial year. This presented a change to the understood spend profile and was unexpected. This payment is not additional funding and would be offset against future payment of the main grant in future years.
- 3.3 An advantage to the Council is receipt of DfT funding in advance of original spend profiling defers the Council project match funding contribution to the latter year of delivery 24/25 while gaining a resilience of project capital funding receipt in the meantime.
- 3.4 In order to achieve the 22/23 grant receipt, the DfT have a grant acceptance deadline of 28th February 23 to enable processing of their budget allocations this financial year before 1st April.
- 3.5 On the 23rd February the project gained a heightened public awareness when Parliamentary Undersecretary for the DfT visited site to make the funding award announcement, which gained television media exposure and photo opportunity with Council Leadership and delivery team.

4.0 Grant Conditions

- 4.1 The Secretary of State for Transport is prepared to award grant under section 31 of the Local Government Act 2003 (s31) for the A59 Kex Gill scheme for the financial year 2022/23 The attached grant award is made with the approval of HM Treasury.
- 4.2 The expenditure covered by this award relates to expenditure incurred by North Yorkshire County Council in prior years up to and including 2022/23 as set out in the Quarter 3 Quarterly Monitoring Return for 2022/23; this figure is £5,883,739. If the expenditure accrued on the scheme in prior years was lower than the Department's total grant payments relating to those years, any over-paid grant will be recovered by the Department through a reduction of grant paid in 2022/23.
- 4.3 The Department will not meet any grant claims that would result in the agreed annual grant allocation being exceeded.
- 4.4 The authority must arrange for the submission of an audit report to the Department from an independent reporting accountant in respect of the grant and the accompanying grant determination and any subsequent amendments to those documents. The accountant's audit report must be produced in accordance with specific assurance instructions to be issued by the Department.
- 4.5 Grant paid to local authorities under this determination may be used only for the purposes for which a capital receipt may be used in accordance with regulations made under section 11 of the Local Government Act 2003.
- 4.6 The Chief Executive and Chief Internal Auditor of each recipient authority is required to sign and return to the Section 31 Grant Claims Manager (Local Authority Major Schemes) in the Department for Transport a declaration, to be received no later than six months after the physical completion of the relevant scheme(s), in the following terms:
"To the best of our knowledge and belief, and having carried out appropriate investigations and checks, in our opinion, in all significant respects, the conditions attached to the Local Authority Major Project Grant Determination 2022-23 No: 31/6226 have been complied with."

- 4.7 If an authority fails to comply with any of the conditions and requirements of paragraphs 1 and 2, the Secretary of State may:
- a) reduce, suspend or withhold grant; or
 - b) by notification in writing to the authority, require the repayment of the whole or any part of the grant.

- 4.8 Any sum notified by the Secretary of State under paragraph 3 (b) shall immediately become repayable to the Secretary of State

5.0 Next Steps

- 5.1 Approval of this report will allow the requisite grant funding approval form to be signed by BES Corporate Director, the Corporate Director Strategic Resources and the Assistant Chief Executive (Legal and Democratic Services) to authorise the Corporate Director Strategic Resources to accept the development cost grant offer
- 5.2 The Corporate Director Strategic Resources is then requested to accept the grant condition and sign the DfT Grant funding return letter by 28th February 23
- 5.3 The main project grant funding will be availed in year 23/24 and 24/25 once the main works contract has been entered, minus this advance award.

6.0 Equalities Implications

- 6.1 Consideration has been given to the potential for any adverse equalities impacts arising from the recommendations of this report. It is the view of officers that the recommendations included in this report do not have an adverse impact on any of the protected characteristics identified in the Equalities Act 2010. However, it is worth noting that a full Equalities Impact Assessment will be carried out as part of the scheme development and planning application. A copy of the EIA is attached in Appendix A.

7.0 Finance Implications

- 7.1 Project baseline cost estimate is £68.8m split £56.1m grant funding from DfT and match contribution from NYCC Capital Reserves at £12.7m. The proposals in this report do not change this.
- 7.2 The total project development expenditure up to end December 2022 from NYCC capital sources is £5,883,739, a figure supplied to DfT in Quarter 3 monitoring return and used as the basis of grant offer.
- 7.3 Once in works contract the DfT will profile main grant funding of £29.010m in 23/24 and £21.206 in 24/25 which added to the initial development cost reimbursement of £5.883m fulfils the whole allocation of £56.100m.
- 7.4 The Council match funding component of £12.700m approved at Executive on 19th July 22 will then be profiled into 24/25. The overall amounts funded by DfT Grant and the Council remain the same, however acceptance of this reports recommendation reprofiles the expenditure to DfT monies first, before drawing up Council capital reserves towards the latter end of project.

8.0 Legal Implications

- 8.1 This matter is being considered by the Executive Member for Highways and Transportation, after consultation with the Corporate Director Business and Environmental Services and the Corporate Director Strategic Resources, under the Executive Member's urgency powers in paragraph 14 of the Executive Members' Delegation Scheme.

- 8.2 The grant terms and conditions which the DfT have confirmed are within the grant offer letter of 14th February 23 have been reviewed by the County Council's Legal Team
- 8.3 Any expenditure of this Grant must comply with the Council's Procurement and Contract Procedure Rules and where relevant the Public Contracts Regulations 2015.
- 8.4 Statutory process deliverables for this project are currently ongoing and on track to be concluded end March 2023 when all applicable land title will be acquired.
- 8.5 A procurement process has been undertaken via a call-off under the YORcivil Major Works Contractors Framework . In August 2022 the County Council awarded 'preferred bidder' status to John Sisk and Son, with this award being conditional upon receipt of the grant monies from the DfT and completion of the relevant statutory processes. Agreed contract award with preferred bidder J Sisk and Son is 3rd April 23.

9.0 Climate Change

- 9.1 There are no climate change issues arising from this report; however, it should be noted the projects strategic focus of diverting the highway away from climate perpetuated landslides mitigates against future climate impact on this principal highway corridor.

10.0 Recommendations

10.1 It is recommended that the BES Executive Member for Highways and Transportation, after consultation with the Corporate Director – Business and Environmental Services and Corporate Director – Strategic Resources:

- i. support an action to accept the DfT grant funding award to reimburse development costs of £5.88m and adjust the project spend profile as described in 7.4 with respect to NYCC capital reserves expenditure.

Karl Battersby
Corporate Director – Business and Environmental Services

Author of Report:
Richard Binks – Head of Major Projects and Infrastructure

Background Documents:

A59 Kex Gill Executive Committee report 19 July 2022
A59 Kex Gill Executive Committee report 24 November 2020
A59 Kex Gill DfT Quarterly returns
A59 Kex Gill DfT grant letters
dated 2nd and 14th February 23

Appendix A - EIA

Initial equality impact assessment screening form			
This form records an equality screening process to determine the relevance of equality to a proposal, and a decision whether or not a full EIA would be appropriate or proportionate.			
Directorate	BES		
Service area	H&T		
Proposal being screened	A59 Kex Gill – DfT grant funding update in which approval is requested to adjust the project spend profile and accept early access to development cost reimbursement		
Officer(s) carrying out screening	Richard Binks		
What are you proposing to do?	<p>The report provides a report on the Kex Gill specifically an update on DfT grant funding.</p> <p>The report seeks approval to accept the DfT grant funding offer following approval of the Full Business Case and to the spending profile</p>		
Why are you proposing this? What are the desired outcomes?	This is required to comply with grant acceptance procedures.		
Does the proposal involve a significant commitment or removal of resources? Please give details.	<p>The adjustment to the NYCC spend profile is to defer all NYCC capital reserve expenditure to 24/25 and accept DfT accelerated spend of their grant.</p> <p>The overall project baseline cost estimate of £68.8m split £56.1m grant funding from DfT and match contribution from NYCC Capital Reserves at £12.7m is unaltered.</p>		
Impact on people with any of the following protected characteristics as defined by the Equality Act 2010, or NYCC's additional agreed characteristics As part of this assessment, please consider the following questions: <ul style="list-style-type: none"> • To what extent is this service used by particular groups of people with protected characteristics? • Does the proposal relate to functions that previous consultation has identified as important? • Do different groups have different needs or experiences in the area the proposal relates to? <p>If for any characteristic it is considered that there is likely to be an adverse impact or you have ticked 'Don't know/no info available', then a full EIA should be carried out where this is proportionate. You are advised to speak to your Equality rep for advice if you are in any doubt.</p>			
Protected characteristic	Potential for adverse impact		Don't know/No info available
	Yes	No	
Age		X	
Disability		X	
Sex		X	
Race		X	
Sexual orientation		X	
Gender reassignment		X	
Religion or belief		X	
Pregnancy or maternity		X	
Marriage or civil partnership		X	
NYCC additional characteristics			
People in rural areas		X	
People on a low income		X	
Carer (unpaid family or friend)		X	
Does the proposal relate to an area where there are known inequalities/probable impacts (e.g. disabled people's access to public transport)? Please give details.			No.

Will the proposal have a significant effect on how other organisations operate? (e.g. partners, funding criteria, etc.). Do any of these organisations support people with protected characteristics? Please explain why you have reached this conclusion.				No	
Decision (Please tick one option)		EIA not relevant or proportionate:	<input checked="checked" type="checkbox"/>	Continue to full EIA:	
Reason for decision		<p>This is a report updating the full business case for the Kex Gill realignment project and seeking approval for changes to the spend profile and continued spend of NYCC reserves.</p> <p>There are no impacts on people with protected characteristics. It is worth noting that a full Equalities Impact Assessment will be carried out as part of the scheme development and planning application.</p>			
Signed (Assistant Director or equivalent)					
Date					