

OVERVIEW AND SCRUTINY COMMITTEE 15 AUGUST 2023

Urgent Update Report regarding the ‘call in’ of the Cabinet decision not to award CIL monies toward the improvement of Linton Crossroads

Reason for urgency:

It is important that the Overview and Scrutiny Committee is aware of the consequences of the decision by Cabinet not to fund improvements to Linton Crossroads from CIL monies specifically in relation to considering the use of a s106 legal agreement to secure monies as part of future development proposals on newly allocated sites. The Cabinet, as part of its deliberations, was aware of the outcome of the recent Local Plan Review examination concerning site allocations for residential development in the Local Plan Review which is currently at examination, and referred to the Inspector’s letter clarifying which one of two sites that had been considered for Coxheath would be taken forward and from which S106 funding could flow.

S106 agreements are the subject of specific government guidance and statutory tests must be applied. In particular, based on proportionality and reasonableness it seems very unlikely that S106 monies from the draft allocation would entirely close the financial gap for the junction improvements needed at Linton Crossroads.

In his letter dated 7 July 2023, the Local Plan Review Inspector confirmed the draft allocation of a residential site for approximately 85 units for a site on the eastern edge of Coxheath (land north of Heath Road) rather than an alternative site to the north proposed by this Council subsequent to the submission of the Local Plan Review which would significantly affect congestion at Linton Crossroads. The Inspector states that “The Local Highway Authority have raised no fundamental objection to the allocation...subject to securing contributions to improvements at the nearby Linton crossroads”. This was a high-level assessment of matters rather than the detailed consideration required at the decision-making stage for an application for development because the Inspector is examining ‘soundness’.

Whilst this was known at the Cabinet meeting, it is considered helpful to discuss the specific implications of this draft allocation and, moreover, the potential to reasonably seek financial contributions and the level of contribution, to secure the improvement of Linton Crossroads via a legal agreement under s106 of the Planning Act. Now that the Cabinet decision is known, all relevant development will be subject to similar considerations.

Consideration of the allocation and other potential development affecting Linton Crossroads

Background:

In terms of previous allocations and related s106 contributions toward the improvement of Linton Crossroads, allocations in the adopted (2017) Local Plan in Coxheath and Boughton Monchelsea were heavily scrutinised in terms of their impact on Linton Crossroads. The capacity of this junction to take more traffic with commensurate mitigation was analysed by MBC’s consulting engineers (Mott McDonald) and a scheme of mitigation (with stage 1 safety compliance) put forward and accepted by the Inspector. The improvement of this junction and the link with the allocations is explicit in the Local Plan and there is a specific monitoring requirement (M47). Therefore, when planning applications were submitted and approved, they were all subject to s106 agreements which aligned to the Local Plan. As a result of the Inspector’s specific consideration of the delivery of evidenced proposed improvements to Linton Crossroads it was considered that s106 legal agreements could be used as the tests (see below) were all met. Therefore, the Inspector undertook

detailed analysis on the need and use of s106 legal agreements at the Examination stage rather than the subsequent planning application stage.

With respect to the draft allocation envisaged by the LPR there has been a pre-application meeting with councillors and some form of planning application is expected. The LPR Inspector has referred to a 'contribution' to Linton Crossroads and this is assumed to be a developer contribution via a s106 agreement.

Planning applications:

In consideration of an application (in consultation with KCC Highways) at land north of Heath Road (i.e the draft allocation) there is likely to be a significant adverse impact on Linton Crossroads. The degree will need to be set out through a transport assessment (including modelling data). A careful judgement will need to be made by the decision maker on whether or not it is reasonable for some of the cost of improvement to Linton Crossroads to be made up of s106 monies contributed by this development. In addition to the impact of the development on the junction a key factor will be whether there is a prospect of the junction improvement works being delivered in a reasonable period of time.

If the assessment has a positive conclusion, then the amount of monies that can be sought reasonably will be another important material consideration.

All s106 legal agreements are subject to the following tests :

1. "necessary to make the development acceptable in planning terms
 2. Directly related to the development; and
 3. **Fairly and reasonably related** in scale and **kind** to the development"
- My emphasis in bold.

It seems unreasonable that a scheme for 85 units with 'costs' of affordable housing provision and CIL would close the financial gap entirely with regard to the junction improvements.

Furthermore, given the situation i.e significant residential development has taken place without improvement to the junction, the decision may need to impose a Grampian style condition on any permission prior to first occupation given the context. However, there are 6 tests to planning conditions and one is **reasonableness**.

Latest comments from KCC Highways (received 4 August 2023)

Following Cabinet's decision on 26th July 2023, further detailed information has been requested to understand why Linton Crossroads was prioritised so highly and the Fountain Lane/A26 junction to a lesser degree. KCC's advice is set out below.

"The KCC bids for CIL funding were made based on the MBC criteria for funding which included compliance with MBC policies, availability of contributions and being 'delivery ready'.

Following review by MBC, the Linton Crossroads scheme was recommended for funding. You know the background to the Linton Crossroads scheme and you have the bid details, but the key aspects to draw out are that it is a congestion hot spot, we have a mature scheme design, we have developer contributions and it is also regularly one of the top crash sites in Kent despite several alterations although they have only been minor changes within the existing highway boundary compared to what is now proposed.

The A26 Fountain Lane scheme by comparison is not as advanced in terms of design, certainty of costs (the current scheme is estimated at £3.0 - £3.5m) v benefits, mitigating construction impact, land requirements (additional 3rd party land may be needed subject to design) and, whilst relatively significant developer contributions have been negotiated, the bulk of these have not yet come to KCC as the developments have not yet reached trigger points for payment. This being said, the importance of the scheme is accepted and assessment and design work is in hand with the intention of a future bid to MBC for CIL funding.”