Highwood Copse School and A339 Link Road - Summary Report

Committee considering report:	Executive
Date of Committee:	12 July 2018
Portfolio Member:	Councillor Hilary Cole, Councillor Jeanette Clifford and Councillor Lynne Doherty
Date Portfolio Member agreed report:	9 July 2018
Report Author:	John Ashworth
Forward Plan Ref:	URGENT ITEM

1. Purpose of the Report

1.1 The purpose of the report is to seek delegated authority from the Executive to exchange a Development Agreement which will secure the delivery of Highwood Copse School ('the School') and a new access and link road from the A339 through to the strategic housing site at Sandleford ('the Access Road').

2. Recommendation

2.1 That following the completion of a section 38 agreement which provides for the Access Road to be dedicated as public highway on the issue of a certificate of practical completion, and the completion of the transfer to the Council of the small parcel of land next to the A339 ("the Highway Land") the Executive delegate to the Corporate Director for Economy and Environment in consultation with the Head of Legal Services and the Head of Finance and Property:

(a) Authority to simultaneously exchange the Development Agreement in an approved form with Newbury College to secure delivery of Highwood Copse School and associated temporary access road, together with the link road from the A339 to the strategic housing site at Sandleford.

(b) If the agreement is not exchanged by 4pm on Monday 16th July 2018, to immediately cease further negotiations with Newbury College for the delivery of Highwood Copse School and the A339 access and link road.

3. Implications

3.1 **Financial:** There is an agreed budget to cover the delivery of the School. This project has been through a competitive tender process and is awaiting the exchange of the Development Agreement.

The cost of the delivery of the road draws on funding from the LEP (£2m) and Council funds (£0.4m). The developer of the Sandleford housing site will also be required to make a contribution to the cost of the Access Road.

3.2 **Policy:** If the Development Agreement is not exchanged, this would frustrate the construction of the Access Road which may have implications for the deliverability of the strategic housing site at Sandleford.

The Local Education Authority needs to plan the admissions policy for September 2019, and a failure to exchange the Development Agreement by the end of July 2018 will have a detrimental impact on that process.

3.3 **Personnel:** None

3.4 **Legal:** The legal risks associated with the Development Agreement are considered in detail in the Part II Report.

3.5 **Risk Management:** There are a number of risks associated with this matter which are outlined below and are considered in further detail in the Report. The key risks relate to:

- Withdrawal of the LEP funding towards the cost of constructing the Access Road.
- The Development Agreement not being drafted in a suitable form which could as a result prevent the construction of the Access Road.
- The absence of a suitable section 38 Agreement would result in a risk that the Access Road which has been constructed at public expense, would not be dedicated as public highway.
- The School admissions policy, as a consequence of the unresolved position for the School, is not accurate for September 2019.
- The School is not completed on time in readiness for school admissions in September 2019.
- Delays could increase the build costs for the School.

It is considered that the above risks could be appropriately mitigated by the simultaneous completion of the section 38 agreement and exchange of the development agreement in a suitable form by 4pm on the 16th July 2018.

3.6 **Property:** Property Services are overseeing the building of Highwood Copse School.

3.7 **Other:** None

4. Other options considered

4.1 Continue with negotiations and set a new timescale so that the delivery of Highwood Copse School moves by a further year to September 2020.

4.2 Cease negotiations with Newbury College and do not progress with the delivery of Highwood Copse School or the A339 access and link road.

Executive Summary

5. Introduction / Background

5.1 The opportunity to link the delivery of two projects - Highwood Copse Primary School ('the School') and a new A339 access and link road to the Strategic Housing Site at Sandleford ('the Access Road') – came about in 2014 and formed the basis of a funding proposal to the Thames Valley Berkshire Local Enterprise Partnership (LEP). As part of this LEP bid, Newbury College came on board as landowner and sponsor for the School.

5.2 The LEP accepted the scheme into their programme in March 2015 and the business case was approved in July 2016 which allocated the LEP funding to this project.

5.3 As part of the bid for LEP funding the College had agreed to gift the land to the Council to enable the construction of the Access Road but, the College subsequently advised that they would not agree to a transfer of the freehold title to the land in question. The Council having considered its position, agreed to proceed on the basis of a leasehold interest only. The College then determined that it would not transfer a leasehold interest in the relevant land. The College's preferred mechanism for proceeding with the Development was by way of a Development Agreement.

5.4 Agreement was reached as to how we could proceed to the satisfaction of both parties. This would comprise the completion of a section 38 agreement which would ensure that the Access Road became dedicated as public highway following its construction. The parties would also enter into a Development Agreement to provide the relevant rights and safeguards to enable the Council to build the School and Access Road on land owned by the College.

5.5 The programme for the delivery of the School focuses on the School being open in September 2019. The timetable for the construction of the School and temporary access road means that the Development Agreement must be exchanged by 16th July 2018. If it is not exchanged by that date, there will be insufficient time to deliver the project.

5.6 The Council must set its admissions policy for September 2019 and in order to do so, it must have confidence that the School will be delivered on time. The deadline for the schools admissions policy is the end of July 2018.

5.7 This matter also involves the LEP funding which has been allocated to the delivery of the Access Road providing an important part of the Council's overall access strategy for the strategic housing site at Sandleford. Thus, the LEP funding is assisting in bringing forward the delivery of housing in the district. The Access Road is also required under the terms of the planning permission for the School requiring the Access Road to be in place within 2 years of the School admitting pupils.

5.8 There is a meeting on 19th July 2018 at which the LEP have asked the Council to confirm whether the Development Agreement has been exchanged. If not, there is a clause in the LEP's agreement with the Council whereby the Council will need to seek permission of the LEP to re-programme the scheme and its funding. There is

a risk that the LEP will not agree to a further change in delivery programme with no confidence that a successful conclusion will be reached. There is a possibility that LEP funding may therefore be withdrawn from this project.

5.9 If the LEP withdraw the funding for this scheme, this means that the Access Road will not be completed, thus making the construction of the School in this location unviable as there will be no means to secure access to it in accordance with the terms of the planning permission. It may also have an impact on the strategic housing site at Sandleford as this proposal would have delivered a fourth access to the site.

5.10 A procurement process has been completed for the construction of the School, and the contracts for this are ready to be signed. However, these are being held until the requisite agreements are in place with the College to enable the School and Access Road to proceed.

5.11 In order to ensure that the School can be constructed and completed in time for the September 2019 admissions, all agreements must be completed by 16th July 2018.

5.12 The reason for bringing this to the Executive is to seek delegated authority to enter into a Development Agreement, providing that the section 38 agreement has been completed.

5.13 Consideration of the legal risks is identified in the Part II Report

6. Proposal(s)

6.1 That following the completion of a section 38 agreement which provides for the Access Road to be dedicated as public highway on the issue of a certificate of practical completion, and the simultaneous exchange of contracts to secure the transfer to the Council of the Highway Land, the Executive delegate to the Corporate Director for Economy and Environment in consultation with the Head of Legal Services and the Head of Finance and Property:

(a) Authority to exchange the Development Agreement in an approved form with Newbury College to secure delivery of Highwood Copse School and the A339 access and link road.

(b) If the agreement is not exchanged by 4pm on Monday 16th July 2018, to immediately cease further negotiations with Newbury College for the delivery of Highwood Copse School and the A339 access and link road.

7. Conclusions

7.1 Following the decision of Newbury College that it wished to enter into a Development Agreement the Council can proceed in this manner subject to appropriate safeguards being in place.

7.2 Simultaneously with the Development Agreement being exchanged, a section 38 agreement is required to be completed in respect of the Access Road to ensure that this road, which is being constructed at public expense, will be dedicated as public highway once constructed by the Council.

7.3 The Council will also require that the Highway Land which it is purchasing from the College is transferred to the Council simultaneously with exchange of the Development Agreement.

7.4 Providing the parties can agree appropriate terms for a Development Agreement and the section 38 agreement which together will secure the delivery of the School and Access Road, officers consider that this is an appropriate way to proceed provided they are concluded by 16 July 2018.

8. Appendices

8.1 Appendix A – Data Protection Impact Assessment

8.2 Appendix B – Equalities Impact Assessment

8.3 Appendix C – Supporting Information

Appendix A

Data Protection Impact Assessment – Stage One

The General Data Protection Regulations require a Data Protection Impact Assessment (DPIA) for certain projects that have a significant impact on the rights of data subjects.

Should you require additional guidance in completing this assessment, please refer to the Information Management Officer via dp@westberks.gov.uk

Directorate:	Economy & Environment
Service:	Corporate Director
Team:	
Lead Officer:	John Ashworth
Title of Project/System:	Highwood Copse School / A339 Access Road
Date of Assessment:	9 July 2018

Do you need to do a Data Protection Impact Assessment (DPIA)?

	Yes	No
Will you be processing SENSITIVE or "special category" personal data? Note – sensitive personal data is described as "*data revealing racial or ethnic origin, political opinions, religious or philosophical beliefs, or trade union membership, and the processing of genetic data, biometric data for the purpose of uniquely identifying a natural person, data concerning health or data concerning a natural person's sex life or sexual orientation*"	☐	X
Will you be processing data on a large scale? Note – Large scale might apply to the number of individuals affected OR the volume of data you are processing OR both	☐	X
Will your project or system have a "social media" dimension? Note – will it have an interactive element which allows users to communicate directly with one another?	☐	X
Will any decisions be automated? Note – does your system or process involve circumstances where an individual's input is "scored" or assessed without intervention/review/checking by a human being? Will there be any "profiling" of data subjects?	☐	X
Will your project/system involve CCTV or monitoring of an area accessible to the public?	☐	X
Will you be using the data you collect to match or cross-reference against another existing set of data?	☐	X
Will you be using any novel, or technologically advanced systems or processes? Note – this could include biometrics, "internet of things" connectivity or anything that is currently not widely utilised	☐	X

If you answer "Yes" to any of the above, you will probably need to complete Data Protection Impact Assessment - Stage Two. If you are unsure, please consult with the Information Management Officer before proceeding.

Appendix B

Equality Impact Assessment - Stage One

We need to ensure that our strategies, polices, functions and services, current and proposed have given due regard to equality and diversity as set out in the Public Sector Equality Duty (Section 149 of the Equality Act), which states:

"(1) A public authority must, in the exercise of its functions, have due regard to the need to:

(a) eliminate discrimination, harassment, victimisation and any other conduct that is prohibited by or under this Act;

(b) advance equality of opportunity between persons who share a relevant protected characteristic and persons who do not share it; This includes the need to:

(i) remove or minimise disadvantages suffered by persons who share a relevant protected characteristic that are connected to that characteristic;

(ii) take steps to meet the needs of persons who share a relevant protected characteristic that are different from the needs of persons who do not share it;

(c) foster good relations between persons who share a relevant protected characteristic and persons who do not share it, with due regard, in particular, to the need to be aware that compliance with the duties in this section may involve treating some persons more favourably than others.

(2) The steps involved in meeting the needs of disabled persons that are different from the needs of persons who are not disabled include, in particular, steps to take account of disabled persons' disabilities.

(3) Compliance with the duties in this section may involve treating some persons more favourably than others."

The following list of questions may help to establish whether the decision is relevant to equality:

- **Does the decision affect service users, employees or the wider community?**
- **(The relevance of a decision to equality depends not just on the number of those affected but on the significance of the impact on them)**
- **Is it likely to affect people with particular protected characteristics differently?**
- **Is it a major policy, or a major change to an existing policy, significantly affecting how functions are delivered?**
- **Will the decision have a significant impact on how other organisations operate in terms of equality?**
- **Does the decision relate to functions that engagement has identified as being important to people with particular protected characteristics?**
- **Does the decision relate to an area with known inequalities?**
- **Does the decision relate to any equality objectives that have been set by the council?**

Please complete the following questions to determine whether a full Stage Two, Equality Impact Assessment is required.

What is the proposed decision that you are asking the Executive to make:	To delegate authority to proceed with the development of Highwood Copse School and the A339 Access Road.
Summary of relevant legislation:	N/A
Does the proposed decision conflict with any of the Council's key strategy priorities?	No
Name of assessor:	Sarah Clarke
Date of assessment:	09/07/18

Is this a:		**Is this:**	
Policy	**No**	**New or proposed**	**Yes**
Strategy	**No**	**Already exists and is being reviewed**	**No**
Function	**Yes**	**Is changing**	**No**
Service	**No**		

1 What are the main aims, objectives and intended outcomes of the proposed decision and who is likely to benefit from it?	
Aims:	To build a new primary school and access from the A339 to the strategic housing site at Sandleford.
Objectives:	To meet the basic need for primary school places in the district and assist to unlock the strategic housing site at Sandleford.
Outcomes:	All children have school places and a strategic housing site will generate additional housing.
Benefits:	Children are educated and new housing will become available.

2 Note which groups may be affected by the proposed decision. Consider how they may be affected, whether it is positively or negatively and what sources of information have been used to determine this.

(Please demonstrate consideration of all strands – Age, Disability, Gender Reassignment, Marriage and Civil Partnership, Pregnancy and Maternity, Race, Religion or Belief, Sex and Sexual Orientation.)

Group Affected	What might be the effect?	Information to support this
Age	No negative impact from this proposal on this group.	

Disability	No negative impact from this proposal on this group.	
Gender Reassignment	No negative impact from this proposal on this group.	
Marriage and Civil Partnership	No negative impact from this proposal on this group.	
Pregnancy and Maternity	No negative impact from this proposal on this group.	
Race	No negative impact from this proposal on this group.	
Religion or Belief	No negative impact from this proposal on this group.	
Sex	No negative impact from this proposal on this group.	
Sexual Orientation	No negative impact from this proposal on this group.	
Further Comments relating to the item:		
None		

3 Result	
Are there any aspects of the proposed decision, including how it is delivered or accessed, that could contribute to inequality?	**No**
Please provide an explanation for your answer: This proposal seeks to secure the delivery of a new school and access road, which is not anticipated will have any negative impact on any of the protected characteristics.	
Will the proposed decision have an adverse impact upon the lives of people, including employees and service users?	**No**
Please provide an explanation for your answer: This proposal seeks to improve the lives of people living in the district.	

If your answers to question 2 have identified potential adverse impacts and you have answered 'yes' to either of the sections at question 3, or you are unsure about the impact, then you should carry out a Stage Two Equality Impact Assessment.

If a Stage Two Equality Impact Assessment is required, before proceeding you should discuss the scope of the Assessment with service managers in your area. You will also need to refer to the Equality Impact Assessment guidance and Stage Two template.

4 Identify next steps as appropriate:	
Stage Two required	No

Owner of Stage Two assessment:	
Timescale for Stage Two assessment:	

Name: Sarah Clarke **Date:9 July 2018**

Please now forward this completed form to Rachel Craggs, Principal Policy Officer (Equality and Diversity) (rachel.craggs@westberks.gov.uk), for publication on the WBC website.

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