

**Supplement to the agenda for**

# **Cabinet**

**Thursday 24 September 2020**

**2.30 pm**

**Online meeting**

	<b>Pages</b>
<b>4. QUESTIONS FROM MEMBERS OF THE PUBLIC</b>	3 - 4
<b>5. QUESTIONS FROM COUNCILLORS</b>	5 - 12



PUBLIC QUESTIONS TO CABINET – 24 September 2020

**Question 1**

**Mr P McKay, Leominster**

**To: cabinet member, infrastructure and transport**

The Highways Map for the Local Street Gazetteer, <https://www.herefordshire.gov.uk/travel-transport/highways-public-rights-way-map>, shows the table of Maintenance Responsibility codes under the heading of Road Status. Could this be corrected, and Road Status then shown as three sets of codes, with option to switch between them, being Highway Dedication, Street Surface and Maintenance Responsibility? This would result in a more informative presentation of the Local Street Gazetteer map, and conform with reply by cabinet member transport and roads to question to Council December 2015 that will continue to work to make as much information as possible available online. Assuming that was agreed, could you also provide some indication of when this map may be viewable in this format?

**Response**

Thank you for your question. Currently the highways and public rights of way map Local Street Gazetteer sets out information using the following five codes:

Local street gazetteer	
Code	Road status
1	Maintainable at public expense 
2	Prospectively maintainable at public expense 
3	Neither 1, 2 nor 4 
4	Maintenance responsibility is to another highway authority 
5	Street outside scope of EToN (including permissive streets) 

We aim to provide as much highway information online that is available and these codes describe maintenance responsibilities.

The addition of further information and codes can always be considered and if there were benefits this information could be added subject to resource and funding being available to do so. Happy to look at your suggestion in more detail. The website would be then updated and be available to the public.



## COUNCILLOR QUESTIONS TO CABINET – 24 September 2020

### Question 1

**Councillor Yolande Watson, Kerne Bridge Ward**

**To: cabinet member infrastructure and transport**

In October 2019, Herefordshire Council resolved that: the executive is requested to write to government to ask them to review the policy regarding part 3 class Q (General Permitted Development Order as amended) applications under the General Permitted Development Order. In light of the response received from the Ministry of Housing, Communities and Local Government dated 2nd July 2020 will the cabinet member seek to put in place a condition that any class Q permitted developments have an agricultural tie placed on them to help provide much-needed homes for family members and agricultural workers, and consult the local community on removing a permitted development right by making an Article 4 direction?

### **Response**

As you will be aware from MHCLG's reply in July 2020, the agricultural to residential permitted development right is seen by the government as an important measure to support our rural communities and help provide much-needed homes, including – but not just for - family members and agricultural workers. The government has also made it clear that they believe it makes best use of existing buildings for our housing supply. These Part Q applications are therefore Prior Approval applications where the development proposed is considered to be permitted development, subject to a number of criteria that need to be satisfied. If these criteria are satisfied, then the council would normally have no option other than for prior approval to be granted.

That said, I am happy to further consider the government's comment (below) about removing this permitted development right by making an Article 4 direction to allow Class Qs to be dealt with like any other planning application where it was felt that it was necessary to protect the local amenity or wellbeing of an area. However, this would in practice be quite difficult to justify, unless in a designated area for example. I would be happy to have officers discuss this with you and Cllr Swinglehurst further to understand the framework template we might use to consider such exceptions and the implications of making an Article 4 direction.

*'Where it is felt that it is necessary to protect the local amenity or wellbeing of an area, the local planning authority can consult the local community on removing a permitted development right by making an Article 4 direction. This then requires a planning application which the local planning authority can determine in accordance with its local plan'.*

### Question 2

**Councillor Nigel Shaw, Bromyard Bringsty Ward**

**To: cabinet member infrastructure and transport**

On 21st July the 151 officer of Shropshire County Council wrote to the Herefordshire Council 151 officer to demand the repayment of £3,843,609-71 due to the LEP following this administrations halting of the South Wye link road project. Has a reply been sent and, if so, can this reply and the original letter now be put in the public domain, in the interests of openness and transparency?

## **Response**

A letter was received on 21 July 2020 from Shropshire County Council and a response was sent on 4 August. Both of these documents are attached as appendices to this response.

## **Question 3**

**Councillor Jeremy Milln, Central Ward**

**To: cabinet member finance and corporate services**

In future could we please commonly include a measure for the historic environment in the Environment Scorecard at Appendix 7? This to track our stewardship of our heritage assets including listed buildings, archaeological sites and conservation areas much as we do our natural resources. In respect of scheduled monuments and grade I and II\* listed buildings at risk information is obtainable from Historic England.

## **Response**

The Environmental Scorecard is primarily designed to report on performance measures protecting the natural environment, rather than the built one. However, the planning team does monitor the performance of both the Building Conservation team and the Archaeology team at monthly service performance meetings. This management process tracks monthly performance measures which assess the number of both building conservation and archaeological consultations responded to within the specified planning deadline. In this way we ensure that the stewardship of our heritage assets are protected and are effectively considered in the determination of planning applications.

Mr Andrew Lovegrove  
Section 151 Officer  
County of Herefordshire District Council  
Shirehall  
St Peter's Square  
Hereford  
HR1 2HX

Shropshire Council  
Shirehall  
Abbey Foregate  
Shrewsbury  
Shropshire SY2 6ND

Date: 21st July 2020

My Ref:

Your Ref

Dear Andrew

**Grant Funding Agreement for South Wye Transport Package  
Notice of Termination with Immediate Effect and Grant Clawback**

**1 INTRODUCTION**

- 1.1 We write in respect of the Grant Funding Agreement for South Wye Transport Package entered into by Shropshire Council ("**Shropshire**") and County of Herefordshire District Council ("**Herefordshire**") in February 2016 (the "**Agreement**").
- 1.2 This is a notice pursuant to clause 7.2 of the Agreement to terminate the Agreement with immediate effect and to require you to repay the total sum of the grant paid to you pursuant to the Agreement, being **£3,843,609.71** within 20 days of your receipt of this notice, as more particularly described below.

**2 BACKGROUND**

- 2.1 In February 2016, Shropshire (on behalf of the LEP) and Herefordshire entered into the Agreement, under which Shropshire agreed to make £27 million (the "**Grant**") available to Herefordshire for the purpose of the South Wye Transport Package, as described and provided for in the Agreement.
- 2.2 The Agreement provides that in order for grant sums to be transferred to Herefordshire, Herefordshire must submit a "grant drawdown form" to Shropshire in respect of the sum claimed.
- 2.3 The sums claimed by Herefordshire and transferred by Shropshire to Herefordshire pursuant to the Agreement are set out as follows:

Date of Grant Drawdown Form	Date of Transfer	Sum Claimed / Transferred (£)
14.03.16	25.04.16	1,848,704.44
17.04.16	25.05.16	450,822.91
06.06.16	13.06.16	239,375.01
09.01.17	26.01.17	1,066,382.93
13.02.17	07.03.17	140,745.97
08.03.17	28.03.17	97,578.45
	<b>Total</b>	<b>3,843,609.71</b>

- 2.4 On 22 October 2019 Herefordshire took the decision to “pause and review” the SWTP. On 17 January 2020 Herefordshire wrote to the LEP’s Chief Executive, Gill Hamer, specifying the scope of the review and stating that the aim would be to conclude the review by 31 July 2020, at which point the review would:

*“provide the cabinet with recommendations which will inform consideration of next steps.”*

- 2.5 The approach set out in Herefordshire’s 17 January 2020 letter was also confirmed by a decision of Herefordshire’s Cabinet member for Infrastructure and Transport on 24 January 2020, pursuant to recommendations in a report from the Head of Transport and Access Services. The decision recorded that the review would or should be completed by 31 July 2020.

- 2.6 The Herefordshire Cabinet member for Infrastructure and Transport is recorded as saying:-

*“When we arrived as an administration in May 2019, it became evident that this scheme needed to be rigorously examined, as after five years of work there was no complete business case, costs had increased significantly and there were issues related to tendering and planning permissions.”*

- 2.7 This statement about Herefordshire’s lack of progress was accurate.

### **3 THE AGREEMENT**

- 3.1 Principally relevant terms the Agreement include the following.

- 3.2 Clause 1.4 provides:-

*“1.4 The Council [Shropshire] agrees to provide grant funding to You [Herefordshire] from the Local Growth Funds of £27.0m (“the Grant”) for the purposes specified in Appendix 1 (“the Project”) on the terms and conditions set out in this Agreement which include the attached Appendices numbered 1 to 6 Inclusive.”*

3.3 Clause 7.2 provides:

*“The Council may at its absolute discretion if (in the Council’s reasonable opinion) any of the Clawback Events or Termination Events in Appendix [6] occurs:*

...

- *terminate this agreement whereupon the Council shall cease to be under any obligation to provide any further Grant payments to You under this Agreement and (in addition) the Council may require You to repay the whole or any part of the Grant previously paid to You...”*

3.4 Appendix 6 to the Agreement provides:

*“The Council reserves the right to terminate this Agreement and begin grant clawback proceedings should any of the following occur:*

...

*If in the reasonable opinion of the Council progress toward delivery and completion of the Project is unsatisfactory.”*

3.5 Various Milestones in respect of the SWTP are set out at Appendix 1 to the Agreement, which include in respect of the Southern Link Road:

*“Construction - Start on Site” – Autumn 2017*

*“Scheme Completion” – Winter 2018/19*

#### **4 UNSATISFACTORY PROGRESS**

4.1 It is Shropshire’s reasonable opinion that *“progress toward delivery and completion of the Project is unsatisfactory”*. We refer to the following, amongst other, matters.

4.2 Appendix 1 provides for Milestones including that construction of the Southern Link Road should have commenced in Autumn 2017. Two and half years later, construction of the Southern Link Road still has not commenced.

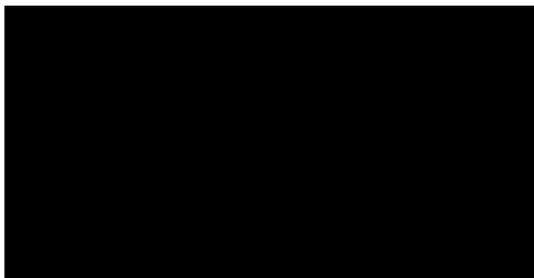
4.3 Even if following the review Herefordshire proposed to undertake the work which the Agreement requires it to undertake, and began it immediately, work on construction of the Southern Link Road would still be nearly 3 years behind this timetable.

- 4.4 Further, the table at page 20 within Appendix 1 (being “*Contract Financial Profile for the Project*”) shows that by the end of Quarter 4 2019/20 (i.e. by 31 March 2020) Herefordshire should have incurred in excess of £25 million out of the total £27 million grant available pursuant to the Agreement. However, to date only £3,843,609.71 has in fact been drawn down, indicating how little progress has been made towards delivery and completion of the project compared to the progress anticipated and required by the Agreement as at today’s date.
- 4.5 As Herefordshire is aware, if the entirety of the Grant is not incurred by 31 March 2021 in accordance with the Agreement, not only would Herefordshire not be entitled to claim the outstanding sum, but the LEP would also lose the right to claim the outstanding sum from central government.
- 4.6 In these circumstances and in the light of all of the above, it is entirely reasonable for Shropshire to conclude that progress toward delivery and completion of the project is unsatisfactory, and to consequently to terminate the Agreement with immediate effect and require Herefordshire to repay the sum of the Grant already paid to it.

## 5 TERMINATION AND GRANT CLAWBACK

- 5.1 Shropshire is of the opinion that “progress toward delivery and completion of the Project is unsatisfactory” for the purposes of clause 7.2 and Appendix 6, and terminates the Agreement with immediate effect. This is without prejudice to any other right which Shropshire may have against Herefordshire, whether under the Agreement (including any other right of termination) or otherwise.
- 5.2 Pursuant to clause 7.2 Shropshire also requires Herefordshire to repay the whole of the Grant thus far transferred to Herefordshire pursuant to the Agreement, being the sum of **£3,843,609.71**, within 20 days of receipt of this notice (i.e. by 10<sup>th</sup> August 2020). Should Herefordshire fail to repay the entirety of this amount by 10<sup>th</sup> August 2020, Herefordshire’s liability shall be enforceable as a contractual debt with interest.

Yours sincerely



James Walton  
Director of Finance, Governance & Assurance (Section 151)  
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Mr James Walton  
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Dear James

Thank you for your letter dated 21 July 2020.

Herefordshire Council understand that under the terms of the letter Shropshire Council are seeking to terminate the Grant Funding Agreement for the South Wye Transport Package dated February 2016 ("Grant Agreement") and clawback £3,843,609.71 paid to Herefordshire Council under the terms of the Grant Agreement between March 2016 and March 2017 on the basis that "progress toward delivery and completion of the Project is unsatisfactory".

Herefordshire Council do not agree that progress towards delivery and completion of the South Wye Transport Package (SWTP) is unsatisfactory as the council has continued to pursue the objectives and outcomes of the SWTP within the Funding Period and has continued to provide updates on the SWTP as required under the terms of the Grant Agreement. Therefore it would not be reasonable for Shropshire Council to conclude progress on the SWTP (Project) has been unsatisfactory to date.

On the basis that none of the termination and clawback events in the Appendix 6 of the Grant Agreement have occurred no right of termination arises under clause 7.2 and therefore there is no requirement for Herefordshire Council to repay the Grant paid to date.

Yours sincerely



**ANDREW LOVEGROVE  
CHIEF FINANCE OFFICER**

