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| Decision maker: | Assistant director environment and place |
| Decision date: | Wednesday, 21 February 2018 |
| Title of report: | Whitbourne: improved active travel including public transport infrastructure Improvements |
| Report by: | Engineering manager |

Classification

Open

Decision type

Non-key

Wards affected

Bromyard Bringsty;

Purpose and summary

To agree the implementation of the improvements to the active travel infrastructure in Whitbourne which will deliver a new bus shelter, white lining and crossing facilities.

The S106 contribution of £31,974.00 has been identified and secured as part of the planning application relating to the Acreage, Whitbourne. The monies have been deposited with the council to enable commissioning of the proposed works.

Recommendation(s)

That:

- (a) The S106 active travel and public transport scheme be implemented in Whitbourne; and**
- (b) The Public Realm Annual Plan be amended to include the design and delivery of the scheme to the value of the contribution, £31,974.00.**

Alternative options

1. The council could decide not to implement the scheme, however, the monies paid to the council by the developer, will be required to be refunded in full, if not spent in accordance with either the terms or timescales of the S106 Agreement.
2. Not proceeding with the scheme will leave the locality without the improvements, it has been demonstrated through the planning application that there is a need for the works which will benefit the community.

Key considerations

3. The council entered into the S106 Town and Country Planning Act 1990 legal agreement with the developer to mitigate the impact of the development. Funds received must be used for the purpose specified in the legal agreements Heads of Terms.
4. Planning permission P133439/F gave permission for 20 new residential accommodation on the site off the Acreage, Whitbourne, Herefordshire. The S106 agreement was signed on the 26 March 2015 which secured the £31,974.00 contribution.
5. Consultation with the local member and the parish council has identified the bus shelter and works in the vicinity as the highest priority.
6. Balfour Beatty Living Places (BBLP) is the council's service provider delivering the public realm contract. Through the annual plan process, Annex 4 development control and devolved services, deliver S106 schemes. This scheme has been identified but the budget did not form part of the 2017/18 Annual Plan.

Community impact

7. The use of the S106 monies to implement the proposed scheme will enhance the locality in providing the bus shelter and improve connectivity in the locality.
8. The recommendation does not give rise to any health and safety implications, the detailed design will ensure compliance to relevant legislative requirements such as health and safety and construction (design and management) regulations 2015.

Equality duty

9. Under section 149 of the Equality Act 2010, the 'general duty' on public authorities is set out as follows:

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;
- (c) foster good relations between persons who share a relevant protected characteristic and persons who do not share it.

10. The public sector equality duty (specific duty) requires us to consider how we can positively contribute to the advancement of equality and good relations, and demonstrate that we are paying 'due regard' in our decision making in the design of policies and in the delivery of services. Our service providers, BBLP, will be made aware of their contractual requirements in regards to equality legislation.

Resource implications

11. The design and build of the proposed scheme is within the contributions, £31,974.00. The monies are held by the council awaiting implementation of the scheme.
12. BBLP have available resources to deliver the scheme within timescales and budget.

Legal implications

13. This is a non-executive function and as such the Assistant director environment and place as the decision maker has the authority delegated to him from the Chief Executive (under Part 2 Article 10 in exercise of its functions in the Part 3 Functions Scheme Section 7 officer functions of the Constitution ECC Scheme of delegation to officers) to act on behalf of Herefordshire Council in respect of highways and transportation matters as the highways authority and all land use planning matters under the Town and Country Planning Acts, secondary legislation and any related statutory instruments.
14. The council has a legal duty to maintain the public highway under the Highways Act 1980 and duties under the Traffic Act 1985 and related legislation to make provision for public passenger transport services. Under the Traffic Act 1985 the council also has a power to provide bus stops and bus shelters.
15. Section 106 of the Town and Country Planning Act 1990 allows any person interested in land in the area of a local planning authority to enter into a planning obligation by way of agreement to restrict the development or use of the land; to require specified operations or activities to be carried out in, on, under or over the land; for the land to be used in any specified way; or requiring a sum or sums to be paid to make the development acceptable in planning terms. The obligation is enforceable by the local planning authority against the person entering into the obligation and against any person as successor in title.
16. At the time of entering into the Section 106 agreement referred to above it was deemed necessary to enter into an agreement to make the development acceptable in planning policy terms, and to offset the impact of the development on the local infrastructure. The obligation required a contribution to be secured. As the Report notes, these works have been secured by way of a contribution from the developer and will be repayable if not commissioned in accordance with the terms of the s106 legal agreement
17. By virtue of the section 106 being a contractual agreement the owner/developer is required to pay the monies and the council to use the monies for those said purposes. If the monies are not used they are contractually required to return them to the person/s who made the payment. No third party can enforce the contractual obligations in the section 106 agreement
18. There are no legal problems with doing what is proposed and no other legal considerations

Risk management

19.

| Risk /opportunity | Mitigation |
|--|--|
| Build costs exceed available funds | Regular budget control meetings with BBLP, scheme managed through the public realm contract. Scheme to be target costed. |
| Establishment/acceptance of local maintenance of asset (shelter to be parish council responsibility) | BBLP to manage stakeholder engagement. |

20. The reputational and financial risk will be managed through the public realm contract mechanisms.

Consultees

21. The parish council and local ward member have been consulted on the proposed scheme from the planning permission through to agreeing the proposed works as set out in the report.

Appendices

None

Background papers

None