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Shropshire Council
Shirehall
Abbey Foregate
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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 |
| | Total | 3,843,609.71 |

- 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.

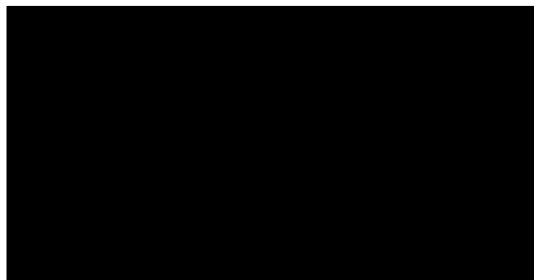
4.3 Even if following the review Herefordshire proposed to undertake the work which the Agreement requires it to undertake, and began it immediately, work on construction of the Southern Link Road would still be nearly 3 years behind this timetable.

- 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 10th August 2020). Should Herefordshire fail to repay the entirety of this amount by 10th August 2020, Herefordshire’s liability shall be enforceable as a contractual debt with interest.

Yours sincerely



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