

**Title of report:** Lugwardine: A438 Improvement scheme: S106 Works  
Pedestrian Crossing and footway

**Decision maker:** Cabinet member infrastructure and transport

**Decision date:** Wednesday 26 May 2021

**Report by:** Engineering manager

**Classification**

Open

**Decision type**

Non-key

**Wards affected**

Hagley;

**Purpose**

To approve the allocation of S106 contributions to fund a design and build scheme to deliver a controlled crossing and footway link in the village of Lugwardine and to include the scheme into the 2021/22 Public Realm Annual Plan.

**Recommendation(s)**

**That:**

- (a) The cabinet member approves the allocation of £150,000 of Section 106 monies, from the housing developments in the locality, to be used for the design and construction of a crossing and footway link through the public realm contract; and**
- (b) All operational decisions to implement the agreed design to be taken by the assistant director highways and transport/head of infrastructure delivery.**

**Alternative options**

1. Do nothing, not to implement the scheme. This is not recommended as the S106 agreement sets out what the contribution can and should be used for, and there is likely to be a clawback provision in the agreement that says that if the monies are not spent or allocated within a certain period of time from its payment, then the monies will have to be returned.

2. To outsource the work through a procurement framework. This would be viable option but would delay the delivery of the scheme. This is not recommended as there are current concerns at the entrance to the school and this investment will address some of the concerns by protecting the pupils and residents crossing the busy A438.

## **Key considerations**

3. Lugwardine is a busy village east of Hereford, the A438 links Hereford to Ledbury and further to the M50. Traffic flows are high and pass the busy St Mary's school. The school is served by a high number of pupils travelling on buses and parents picking up and dropping off by car. The evening is more problematic due to the condensed time allocated to clear. The current Covid situation has made the situation worse as more parents are using cars to take their children to school.
4. The S106 developer contributions in the area are significant following large developments in the village. (S106 is explained in the legal implications below) The parish council and local member have been in consultation with the S106 planning obligations manager and the highways team, as to what needs to be delivered as part of the S106 contributions. The crossing and footpath have been identified as part of the discussions
5. Due to the Covid situation, a higher number of vehicle trips have been observed, this is causing pressure at the junction of the school and Traherne Close. Some dangerous manoeuvres by drivers not associated with the school have been observed.
6. As set out in the government's statutory guidance Traffic Management Act 2004: network management in response to Covid-19, additional works may be possible such as traffic regulation orders that will assist in making the area safe. These are being developed and will be subject of further governance.
7. The crossing will provide additional protection and safety to the school pupils and residents who need to cross to access the bus waiting facilities, this will improve the active travel links which is required as part of the S106 commitment.

## **Community impact**

8. The aim of the scheme is to make the area safer for all and provide a good pedestrian link to the school and bus waiting facilities, this fits with the County Plan ambition of strengthening communities to ensure everyone lives well and safely together, it will also enhance the location making it a better place to live.
9. The introduction of the crossing and footpath will enhance and assist in identifying the location as a place which will make drivers more aware of the school, village and potential slowing traffic which will add benefit to the community.

## **Environmental Impact**

10. Herefordshire Council provides and purchases a wide range of services for the people of Herefordshire. Together with partner organisations in the private, public and voluntary sectors we share a strong commitment to improving our environmental sustainability,

achieving carbon neutrality and to protect and enhance Herefordshire's outstanding natural environment.

11. The scheme will improve residents' access to the wider network via public transport which will benefit in removing the need to use the car which will reduce carbon emissions and improve air quality.
12. Improving the access to the school will assist in pupils and parents making better choices in how they travel and reduce the need for the car.
13. Appendix A shows an indicative design for the crossing and footpath, this will need to be subject to detailed design which may change to a controlled crossing rather than a zebra as indicated.

## **Equality duty**

14. 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.
15. Improving access to public transport and to the school will benefit all users.
  16. 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 providers will be made aware of their contractual requirements in regards to equality legislation.

## **Resource implications**

17. The S106 developer contributions have been identified to fund a budget of £150,000 to cover the costs of this project, this will be a fixed target costed scheme once the design has been completed and the scheme evaluated. Any S106 funding remaining after project completion will be retained within the S106 monies identified for further mitigation of the development in Lugwardine and Bartestree. This funding sits within the Economy and Place S106 capital project in the capital programme.
18. Following consultation about the crossing, which confirmed local support for the scheme, the design and construction phase will progress. The public realm contract will be used to undertake this work. Whilst it would be possible to outsource the work through a

procurement framework, it would cause undue delay the delivery of the scheme. This is not recommended as there are current concerns at the entrance to the school and this investment will address some of the concerns by protecting the pupils and residents crossing the busy A438. The Public Realm Contract will ensure value for money for the delivery of this scheme, as it will enable works to be delivered in a shorter timescale than if it was closely monitored by the contract management team. Any changes will be subject of a robust change control mechanism.

## **Legal implications**

19. This is a non-executive function and a non-key decision and as such the Chief Executive under Part 2 Article 10 can delegate the Council's function under Part 3 Section 7 of the Constitution and under the Economy and Place Scheme of delegation to officers to act on behalf of Herefordshire Council in respect of all land use planning matters under the Town and Country Planning Acts, secondary legislation and any related statutory instruments. In this instance the cabinet member infrastructure and transport will make the decision.
20. The Town and Country Planning Act 1990 confers statutory obligations on Herefordshire Council as the local planning authority for the administrative area of Herefordshire, the functions of which are referred to in Schedule 1 of the referred to Act.
21. 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.
22. It was deemed necessary for developers with housing developments in the locality to enter into agreements to make the developments acceptable in planning policy terms, to ensure compliance with Regulation 122 of the Community Infrastructure Levy Regulations 2010 (as amended) (CIL Regulations) and the various agreements required amongst others, planning obligations in the form of highway contributions
23. By virtue of 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 or allotted within a set timeframe in the agreement, 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.
24. These highway contributions from the housing developments in the locality are able to be pooled under the CIL Regulations to fund the design and build scheme in delivering a crossing and footway link in the village of Lugwardine.

25. There are no legal problems with doing what is proposed and no other legal considerations.

## **Risk management**

26. There are safety concerns in the locality, the pupils crossing the congested entrance have to do so without a crossing patrol or crossing facilities as proposed in this scheme. The safety concerns will be addressed by the introduction of the crossing and path.
27. Not delivering the scheme will mean there is still risk which needs to be mitigated which has the potential for accidents or near misses, this has a reputational risk.
28. Resource risks will be managed through the public realm contract.
29. Budget risk, full funding of the scheme will be mitigated through the design process.

## **Consultees**

30. The local member has been consulted as part of developing the S106 schemes in the area, the scheme is part of a package to be delivered. The local member is supportive of the proposed scheme.
31. A parish consultation was undertaken following concerns raised by the parish council that the views of the locality should be understood before investment of the S106 funding. A consultation was undertaken with the letters going out to all households and businesses on the 15 December 2020 with a return date of 10 January. A list of responses is attached to the report in Appendix B. 121 responses were received of which 107 wanted the crossing, 37 in location A, 70 in location B, 8 had no preference with 6 opposing the investment in the infrastructure.

## **Appendices**

Appendix A - Indicative crossing and footpath design

Appendix B - Consultation Responses

## **Background papers**

None identified