

Huncoat Garden Village

Proposed grant agreement between Homes England (HE) and Hyndburn Borough Council (HBC)

Summary of key provisions

1. HE will pay HBC a grant of up to £29,897 222.00 during the period from signature of the agreement until 31st March 2028. HE has no obligation to extend the availability period if the project overruns. Grant will usually be paid monthly following receipt of a claim from HBC.
2. HE can reduce the amount of grant payable to HBC:
 - a. In the event HBC defaults on its obligations; or
 - b. Other income is received for the project costs by either HBC, a landowner or a developer; or
 - c. There are agreed changes to the project outputs (such as changes to the number of houses to be delivered) or changes to the Infrastructure Works (i.e. the land remediation, the construction of the road or delivery of the houses).
3. There are quite a few conditions precedent to payment of the grant funding to HBC as follows:
 - a. Conditions for payment of the Junction Works Costs (the grant of £2,192,500.00 to be paid to National Highways for improvement to junction 8 M65), the Historic Costs (the monies already spent up front by HBC in respect of consultancy costs etc, up to a maximum amount of ££897,646.00) and the Pre-construction Costs (up to £624,007.00 to cover the costs of acquiring land for the relief road including CPO, gaining planning permission for the relief road etc):
 - i. The section 151 officer must confirm that the costs have been incurred;
 - ii. HE must be satisfied that payment complies with subsidy control rules
 - b. Conditions for payment of all other costs:
 - i. The section 151 officer must certify that HBC has sufficient funds to complete the Infrastructure Works (for example in respect of cost overruns for the relief road – refer to “7” below);
 - ii. HE is satisfied that the landowners and developers are capable of delivering the works;
 - iii. Planning permission and all other consents are in place
 - iv. HE satisfied that the delivery arrangements are in accordance with the delivery plan
 - v. HBC has provided evidence of title to the site of the infrastructure works and confirmed to HE that HBC (or the relevant landowner or developer) has sufficient interest in the land in question to enable the works to be carried out. It is likely that a CPO will be required in respect of the acquisition of land for the relief road, which involves some risk for HBC (in terms of timetable, land valuations etc). It is currently considered that the CPO will be made by HBC using Planning Act powers but counsel’s advice is to be sought to confirm that this is the appropriate statutory route for the land acquisitions.
 - vi. HE has approved the terms of HBC’s agreements with the various landowners;

- vii. HE is satisfied that HBC has the necessary rights of access to the land in question
 - viii. No events of default have occurred
 - ix. HE is satisfied that the delivery arrangements are subsidy control compliant.
4. HBC has the following key delivery obligations:
 - a. To use reasonable endeavours to ensure the new homes are delivered by the target dates set out in Schedule 2 of the agreement;
 - b. To ensure the Infrastructure Works (i.e the land remediation, the construction of the relief road and the construction of the houses) are delivered in accordance with the terms of the grant agreement, good industry practice and the relevant planning permission;
 - c. To ensure the Infrastructure Works start and are completed by the various completion dates set out in Schedule 1.
 5. HE must approve the terms of our agreement with National Highways re the Junction Works before the grant monies will be paid to HBC and National Highway's consent will be needed for any subsequent amendment of that agreement.
 6. The Infrastructure Works cannot start until all necessary consents are in place, including planning permission.
 7. HBC is responsible for all cost overruns in connection with the project. In this regard we are aware of a potential inflationary cost increase of £1.7 million in respect of construction of the relief road. Other areas of spend where HBC may have to meet additional costs could include land assembly costs and professional fees.
 8. HBC must ensure that all the works are insured. HBC must also reinstate any works that are damaged or destroyed and must pay any shortfall if the full reinstatement cost is not met by the insurance monies. These obligations can be passed on to the landowners and developer in our contractual arrangements with them.
 9. Any land HBC acquires in respect of the project and any land we own that is to be used for delivery of the Infrastructure Works, must be sold at market value. These obligations can be passed on to the landowners and developer in our contractual arrangements with them.
 10. The project site (including the housing sites) can only be sold with HE's consent unless the sale relates to construction of utilities (eg substations, pumping stations etc) or compliance with planning obligations. Mortgages or other security cannot be taken over land that has benefitted from the grant funding unless HE have given their consent. These obligations can be passed on to the landowners and developer in our contractual arrangements with them.
 11. Any houses built as part of the project can only be sold as freehold. Any flats built as part of the project can be sold as leasehold provided there is no more than a peppercorn rent. These obligations can be passed on to the landowners and developer in our contractual arrangements with them.
 12. During the project we must submit monthly monitoring information to HE and this must be signed off by the section 151 officer. HBC is also required to meet monthly with HE and to give HE open book access to our records relating to the project.
 13. HBC must notify HE immediately if there is any change in the Council's financial circumstances, or those of a landowner or developer, that could have an adverse effect on the project. This can be treated as an event of default (see para 16 below).

14. HBC cannot amend the terms of the funding agreement or the details of the project without HE consent. HBC can be asked to pay HE's costs and expenses in dealing with and variations requested by HBC.
15. Except in certain prescribed circumstances (such as flooding, strikes, government action, terrorism etc) a failure to achieve the project milestones can be treated as an event of default by HE (see para 16 below).
16. If an event of default occurs there are a range of actions HE can take (and most breaches of the terms of the agreement, or failures by HBC to meet its obligations in respect of project delivery, can be events of default):
 - a. They can try to agree a remediation plan with HBC if they think the default is capable of remedy; or
 - b. They can terminate the grant agreement; or
 - c. They can suspend payment of the grant for such period as they decide; or
 - d. They can withhold or terminate further grant payments to HBC; or
 - e. They can redirect the grant to somebody else in connection with the project eg they could pay a landowner directly; or
 - f. They could require repayment of some or all of the grant.
17. HBC can be asked to pay HE's costs and expenses in investigating and dealing with events of default.
18. HBC must not do anything in connection with the project that would bring HE into disrepute.
19. The agreement contains the usual "boiler plate" clauses relating to: bribery, publicity, data protection, intellectual property, confidentiality, freedom of information, VAT, assignment, subsidy control, notices, third party rights etc.
20. HBC must indemnify HE in respect of legal claims for personal injury, death and damage to property arising in respect of the project or any breach of the terms of the grant agreement by HBC, the landowners and any contractors.
21. The dispute procedure provides for a referral for formal mediation if disputes between HE and HBC cannot be agreed informally. If the mediation is unsuccessful HE may:
 - a. Require repayment of the grant funding; or
 - b. Terminate the grant agreement; or
 - c. Withhold payment of the grant; or
 - d. Pay the grant to somebody else eg by paying a landowner or contractor directly
22. HBC is required to register a restriction against any land it owns that will form part of the site of the infrastructure works. This will prohibit sale of the land without HE's consent.
23. The owners of the remediation sites will be required to register a restriction against their title that will prohibit sale of the same without the consent of HBC and the restriction will only be released to permit plot sale, sales relating to planning conditions or sales relating to infrastructure construction, such as sub-stations etc.
24. HBC is obliged to secure planning permission for the relief road.
25. HBC must have acquired all land needed to construct the relief road before we can claim any grant relating to the cost of constructing the relief road.
26. HBC is required to take all reasonable steps to ensure adoption of the emerging local plan and the associated design code of the project.

27. Schedule “7” consists of twenty pre-commencement conditions comprising of strategies or schedules that demonstrate the Council’s ability to deliver the project and comply with grant agreement conditions. Some of the key schedules include:

- Delivery Programme
- Land Assembly and CPO Strategy
- (Grant) Recovery Strategy
- Risk Register
- Cost Overrun Strategy