



Report Reference Number: E/21/33

To: Executive
Date: 21 December 2021
Status: Urgent Key Decision
Ward(s) Affected: Sherburn in Elmet
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Lead Executive Member: Councillor Richard Musgrave, Deputy Leader and Lead Executive Member for Place Shaping

Title: Use of Community Infrastructure Levy Funds to Part Fund Extension of Beech Grove Medical Centre Project in Sherburn in Elmet

Summary:

Executive is asked to consider the use of £750,000 of the Community Infrastructure Levy (CIL) funds generated from development in Sherburn and the district to contribute to the extension of Beech Grove Medical Centre Sherburn.

Improvement of healthcare facilities in response to the growth of Sherburn is an eligible spend for CIL. The report to Executive (December 2020) on the CIL/S106 Infrastructure Funding Statement states at paragraph 1.2 that funds raised via the Levy can only be spent on 'strategic infrastructure' which includes transport, flood defences, schools, health and social care facilities, cultural and sport facilities as well as the maintenance and improvement of facilities affected by development.

CIL funds can be passed to another person for them to provide infrastructure. (Regulation 59(4) CIL Regs 2010). For example, funds could be passed to North Yorkshire County Council to provide highway infrastructure.

The scheme is being led by the CCG in partnership with the landowners, the Sherburn Group Practice (which is a private medical general practice partnership). CIL funds can be passed to another person for them to provide health infrastructure. A legal complication arises however, as the infrastructure is jointly funded, and the real estate infrastructure would be delivered to a private medical general practice partnership.

The Council has a legal duty to ensure that subsidy control rules are complied with when allocating public funds. External legal advice has been taken to determine whether the passing of CIL funds to the private medical practice for this scheme constitutes “subsidy”. It does and so the subsidy control rules apply. At the time of writing further information is required from the GP Practice to assess the scheme against the rules and determine whether compliance with the rules can be demonstrated.

In light of the urgency expressed by the CCG and the General Practitioners in respect of the other funding stream deadlines, Members are asked to consider approving the principle of passing £750,000 of CIL funding to either the CCG or the GP Practice to enable the scheme to proceed, and delegating authority to the Director of Economic Regeneration and Place in consultation with the Lead Executive Member for Place Shaping and the S151 Officer to enter into the appropriate legal agreements to secure provision of the health infrastructure scheme subject to being satisfied that the provision of funds does not breach the subsidy control regime.

Members will be updated in relation to any further information available to officers by the date of the Executive Committee.

Sherburn has seen significant development in recent years and the practice has grown from approximately 6700 patients in 1995 to over 10,500 in 2021. It continues to grow, and it is anticipated the practice’s list size will increase to 15,000 in future years. The item is urgent as the match funding from NHS England is time limited and needs to be spent by March 2022. If this scheme is not supported by all partners now, as the CCG will not exist from April 2022 the funding for the scheme would be reprofiled and re-prioritised, and risk delay as it would be bench-marked against all premises improvement proposals in the wider geographical area of the Humber, Coast and Vale.

Recommendations:

That the Executive delegate authority to the Director of Economic Regeneration and Place, in consultation with the Lead Executive Member for Place Shaping and the S151 Officer, to:

- (i) enter into the appropriate legal agreements to pass £750,000 of the Community Infrastructure Levy funds to either the Clinical Commissioning Group or the Beech Grove GP Practice Partnership Dr Andrew Peel, Dr Catriona Osman, Dr Jocelyn Patel, Dr Emma White and Dr Susan Jones to part fund an extension of Beech Grove Medical Centre in Sherburn in Elmet to secure provision of the health infrastructure scheme, subject to necessary due diligence (including an assessment of funding options) and subject to the Director being satisfied that the provision of funds does not breach the subsidy control laws.**

Reasons for recommendation:

The CCG (through access to NHS England funding) have secured funding £1m towards the extension of the Beech Grove medical centre. The NHS England funding opportunity requires spend to be committed by March 2022. The use of CIL Funding for this project is acceptable and justifiable and would help to address the need for increased health-care provision in Sherburn which is directly related to the significant level of housing and employment growth that has taken place in recent years.

1. Introduction and background

- 1.1 Sherburn Group Practice have approached the Council for financial support to extend Beech Grove Medical Centre.
- 1.2 Sherburn Group Practice is the main provider of Primary Health Care in Sherburn-in-Elmet. They are a partnership, the traditional model of General Practice within the NHS, and the practice has provided care to the community of Sherburn and the surrounding villages since the inception of the National Health Service.
- 1.3 The premises on Beech Grove were built in the 1970's as a purpose-built medical centre and were opened in 1976. A minor extension was made in the 1980's.
- 1.4 Major modifications to the premises were last made in 1995 with the restoration of The Old Hungate Hospital.
- 1.5 Minor internal modifications were made in 2014 which created two extra consulting rooms (and improved disabled access) but did not alter the overall floor area: these changes were funded using Section 106 monies.
- 1.6 The population of Sherburn and surrounding villages has increased significantly over the past few years. Major housing developments have taken place within Sherburn (Persimmon, Redrow, Strata, Hodgson's Gate) as well as in surrounding villages such as Ulleskelf and at the former RAF base at Church Fenton. Further housing developments are taking place (Poppy Fields) or planned (Hodgson's Gate 2).
- 1.7 Further developments are forecast within the Selby District Five Year Housing Supply and as part of the new Local Plan. A significant amount of new housing development has taken place in Sherburn in recent years and as a result the Practice list size has grown from approximately 6700 patients in 1995 to over 10,500 in 2021 and continues to grow rapidly. It is anticipated the practice's list size will increase to 15,000.

2. Consideration of request for CIL funding towards the extension of the Beech Grove Medical Centre

The Project

- 2.1 The scheme will lead to the refurbishment and extension of the existing Beech Grove Medical practice to add much needed extra capacity and to bring it up

to modern day standards of access and provision. It is the practice's intention to build an extension to the rear of the Beech Grove site, this will add another floor to the site and also fill in the side elevation. The lower ground floor would be brought up to current standards during this development. This would increase the size of the building from 550 m² to 960 m². It would provide 5 extra consulting rooms and 3 additional treatment rooms. The existing consulting rooms would be enlarged and brought up to modern standards. Disabled access would be improved. Over the years the practice has utilised the lower ground floor rooms for providing medical care to patients by adapting the rooms into consulting rooms. None of these rooms meet current guidance of room size and disabled access is not available into these rooms as the doorways are too narrow for a wheelchair to gain access.

- 2.2 The extension would enable the practice to continue to provide premises for associated services such as District Nurses, Physiotherapists, Podiatry Services, Sexual Health Clinics and Drug and Alcohol Services as well as staff employed by our local Primary Care Network.
- 2.3 This development would provide capacity to meet their current needs as well as future demand from the planned housing development. In addition, this central site within the village is large enough to accommodate further expansion if needed in the future.
- 2.4 The proposed new scheme received planning permission in October 2021 (see Appendix A).
- 2.5 The scheme is planning to go to out to tender the first week in January 2022, with market engagement already taking place to ensure that there are no delays.

The Strategic Case for Investment

- 2.6 From a health-care perspective the strategic case for investment is proven with both the CCG and NHS England, through their ETTF investment, recognising a strong business case for investment in improving and extending healthcare provision in Sherburn.
- 2.7 In terms of the request for CIL funding from the Council, the project demonstrates a strong strategic fit with the Council Plan priorities. These are to make Selby District 'a great place' to live, enjoy and grow and a Council delivering 'great value' including through a mixed-economy model.
- 2.8 It also reflects the principles in the Council Plan of being collaborative (we will be outward-focused and work with others to get things done), community focussed (we will empower and involve people in decisions about their area and their services) and wellbeing led (we will consider the impact on encouraging healthy life choices in our decision-making).
- 2.9 It also aligns well with a key delivery priority in the Council Plan to: Develop a long-term programme of market town regeneration to support the development of vibrant town centres and places in Selby, Tadcaster and

Sherburn and the provision of high-quality leisure, service and accommodation offers for residents, visitors and businesses.

- 2.10 In terms of the Local Plan, the strategic rationale for the project is also strong. The project would consolidate and enhance existing healthcare provision in Sherburn which is a growing place which has seen significant levels of new house building in recent years and requires increased healthcare provision to meet current and future needs.

Key Outcomes and Benefits

- 2.11 The project relies on CIL funding from the Council in order to proceed. The project if realised would deliver a range of key outcomes and benefits, that align with the Council Plan priorities, including:
- Improving the quality of health and well-being facilities in Sherburn through a comprehensive extension and refurbishment of the existing practice.
 - Providing extra health-care capacity to meet the needs of a growing population in Sherburn.
 - Securing £1m investment into Sherburn from NHS England.
 - Delivering wider health and wellbeing benefits e.g., Working with wider partners to develop healthy behaviours and resultant improvements in key health outcomes. Across both the Beech Grove site and the Old Hungate site the practice houses external services including District Nurses, Physiotherapists, Sexual Health Clinics, Drug and Alcohol Services, PCN, and Podiatry Services. The extension to the Beech Grove site would enable the practice to continue to provide premises for these services.
 - Major investment in a key town centre facility adding to the wider development and enhancement of the town centre.
 - An enhanced car parking area close to the town centre which has the potential to contribute to overall town centre public car parking provision subject to agreement with the medical practice.
 - Help to improve town centre vibrancy by attracting a significant number of people into the town centre.
 - Creating a sustainable Health and Well-being hub for the town will reduce the need to travel further to access services – this will benefit all ages and particularly those who do not have easy access to alternative forms of transport.

Using CIL to Support this Project

- 2.12 The use of CIL is justifiable for healthcare facilities and the strategic health case is strong.
- 2.13 This requested CIL contribution can be directly related to the residential housing growth which has been approved and its impact on the health infrastructure which can no longer readily absorb this growth without investment.
- 2.14 A key question for the Executive is whether to invest this level of CIL money in the Sherburn Health Scheme or on other infrastructure priorities in the district. This is explored below.
- 2.15 The Council is required to publish an annual CIL/S106 Infrastructure Funding Statement (IFS) that sets out details about planning obligation receipts and anticipated expenditure. This is to provide clarity and transparency to local communities and developers on the infrastructure and expenditure and in aligning this to planned development, as envisaged in the Local Plan.
- 2.16 The first Selby District IFS was agreed by Executive in December 2020. Paragraph 4.3 of the report referred to the Council preparing a new Local Plan which will allocate sites to support the growth of the district up to 2040 and that as part of this process an Infrastructure Delivery Plan (IDP) is being prepared which will identify the improvements required to local infrastructure to support future development. The Infrastructure Delivery Plan will be used as the basis for future discussions with Members about how CIL receipts should be allocated, and the report goes on to say:
- “...however, at this stage it is anticipated that CIL receipts will be used to fund strategic projects such as highways and flood defences.”*
- 2.17 The IDP can only be finalised once the final list of key sites and associated infrastructure requirements are known – the Publication version of the Local Plan will not go to Executive until after May 2022.
- 2.18 A decision on whether to support the use of CIL for the Sherburn Health facility needs to be made in advance of that (December 2021) to fit NHS funding deadlines for committed spend (March 2022).
- 2.19 The IFS at section 2 sets out ‘the principles’ by which the Council will allocate CIL receipts to infrastructure:
- strategic priority and local priority;
 - deliverability; and
 - % match-funding.
- 2.20 The Sherburn Health Centre project would score well against these principles:
- Meeting the healthcare needs of the growing population of Sherburn is a clear strategic priority of both the Vale of York Clinical Commissioning Group and the Council. The fit with the Council’s strategic priorities was outlined above.

- The scheme is deliverable, subject to the Council agreeing a CIL contribution of up to £750k. The project has been designed and costed by a multi-disciplinary team and has recently received planning permission. The other funding elements are confirmed and subject to confirming the CIL funding from the Council the tenders will go out in January 2022 with construction starting soon after to meet the NHS's own capital funding deadline of funding being committed by March 2022.
- The £750k CIL investment from the Council will lever in £1m of investment from NHS England. It should be noted that the Practice has already invested over £1m in Centre over the years. In addition, the practice will meet the significant costs of furnishing and equipping the premises.

2.21 The case is very strong when measured against all three criteria. The project will also deliver tangible infrastructure benefits in the short term against a proven local need whereas other infrastructure projects linked to the new Local Plan will take longer to deliver.

2.22 The Executive has a choice on whether to invest CIL in this facility rather than on other infrastructure priorities which will be identified in the Local Plan's Infrastructure Delivery Plan (IDP) in 2022. There is a clear case and rationale for investing CIL in this project should the Executive choose to do so.

3. Alternative Options Considered for the Development of Medical Premises at Sherburn Group Practice

3.1 The Practice and the CCG have explored a range of options over the years and the current option to improve and expand the Practice and medical centre in their current location is the best and most realistic option to achieve delivery. Do nothing is not really an option given the current and projected future growth of the town. Each option is explored in more detail below.

Option A – Do Nothing

3.2 The current surgery building was built in the mid-1970s when the patient list size was around 4,000 patients. Since then, the patient list size has increased to over 10,000 patients with only internal alterations to the building to convert elements of the lower ground floor into consultations rooms. The patient list size is forecast to increase by a further 5,000 patients 15,000 patients with the ongoing residential developments currently being built and those forecast within the Selby District Five Year Housing Supply and the new Local Plan. Do nothing is not really an option.

Option B – Relocate

3.3 The Practice and the CCG have carried out an extensive search within the village to find suitable alternative facilities which we could relocate to with minimal alterations or with minor extensions to accommodate them. No suitable buildings were found with very few options available. A couple of examples were the old school on Kirkgate which had been vacant and part of

the library building, but both were smaller than the current facilities and posed significant fit out and access issues.

Option C – New Build Facilities

- 3.4 This option was explored a couple of years ago in several forms and was the subject of a PID application at the time. The first option was a new build facility on Milford Road next to Athelstan Primary School at the south end of Sherburn in Elmet. The facility would have accommodated both Sherburn and South Milford surgeries, but South Milford had to withdraw. This left a second option for a new build surgery solely for Sherburn Group Practice and this scheme progressed up until it did not secure the required NHS support.

Option D – Extension to the Existing Surgery Buildings

- 3.5 Sherburn Group Practice own the Beech Grove Surgery and the old Hungate Hospital grade II listed building. A large area of land adjacent to the Hungate building was initially chosen for extension proposals, but the complexities and grade II listing of the existing building presented significant design and cost issues which jeopardized the scheme.
- 3.6 The final option was to extend the existing surgery building on Beech Grove. A small area of land accessed via an undercroft gave them the opportunity to extend and alter the current floor plans to create the required accommodation. The reorientation of the surgery to use the lower Hungate building car park land future proofs the facility for extended patient visit numbers.
- 3.7 The project is complex, but the presence of the Hungate building allows the surgery to transfer operations without the need for temporary facilities.
- 3.8 Extension of the Old Hungate Hospital would be difficult as it is a listed building and would be less financially viable than developing at Beech Grove.

4. Implications

4.1 Legal Implications

As a CIL Charging Authority, the Council can lawfully pass CIL funds to another person for them to provide infrastructure. (Regulation 59(4) CIL Regs 2010).CIL can be used for the purposes of health infrastructure.

A legal complication arises as the public funds in this instance would be provided to private individuals (the GP Partnership), and as such subsidy control rules apply. In addition to the Council's general fiduciary duties to legally secure that the public benefit is achieved when releasing public monies, the issue of subsidy control arises.

The Council has taken external specialist legal advice and before any CIL monies can be passed over to fund this infrastructure it will need to be

demonstrated that compliance with the EU-UK Trade and Co-operation Agreement has been achieved. A precis of the legal tests are set out below.

The concepts of 'State aid' under EU law and 'subsidy' under the EU-UK Trade & Cooperation Agreement ("**TCA**") are very similar. Under State aid the funding of State healthcare programmes is usually outside the scope of what will be considered a state aid. However, in this instance what is being funded is actually improvements to the asset that a healthcare provider uses to provide services to the National Health Service. In that regard, noting that the provider benefits from an improved asset which it will use to provide services for wider community benefit, we are advised that it would be appropriate to award the funding on the basis of the Service of Public Economic Interest ("**SPEI**") provision at Article 365 of the TCA. In doing so, it should be noted that all other awards of public funding directed towards the improvement of Beech Grove surgery will need to be taken into account and therefore this advice should be shared with the other public funders so a coordinated approach can be applied.

When a subsidy is present, funding may still be lawfully awarded provided certain steps specified in the TCA are taken. For smaller value awards, funding may proceed under the cover of the Small Amounts of Financial Assistance ("**SAFA**") provision. However, the SAFA is limited to awards of up to 325,000 special drawing rights (currently c. £337,000) over three years.

For other awards, including that proposed in this instance, funding may be lawfully awarded by demonstrating that the measure respects each of the new "*Common Principles*" listed at Article 366 TCA. These are:

1. *subsidies pursue a specific public policy objective to remedy an identified market failure or to address an equity rationale such as social difficulties or distributional concerns;*
2. *subsidies are proportionate and limited to what is necessary to achieve the objective;*
3. *subsidies are designed to bring about a change of economic behaviour of the beneficiary that is conducive to achieving the objective and that would not be achieved in the absence of subsidies being provided;*
4. *subsidies should not normally compensate for the costs the beneficiary would have funded in the absence of any subsidy;*
5. *subsidies are an appropriate policy instrument to achieve a public policy objective and that objective cannot be achieved through other less distortive means; and*
6. *subsidies' positive contributions to achieving the objective outweigh any negative effects, in particular the negative effects on trade or investment between the Parties.*

The Council (and other public funders) will need to have one or more documents which can be produced in the event of a challenge that will demonstrate that the public funders can justify the measure as being in line with each of the Common Principles. The prospective recipient of the CIL monies will also need to demonstrate the financial case for the amount of the grant and the implications for the project of the CIL funds not being awarded.

4.2 Financial Implications

- 4.2.1 The Council currently holds £3.129m of CIL funding, of which £700,480 has been generated from developments in Sherburn.
- 4.2.2 The business case submitted by the practice identifies a funding gap of £750,000 after contributions from the NHS. The practice advise that this is the amount of financial support they are asking Selby District Council to invest into the project. They state without this financial support the project is untenable. NHS funding is dependent on the project commencing this financial year. Inadequate premises are a barrier to recruiting GPs in the future.
- 4.2.3 The proposition is for CIL funding to be passported to the CCG or awarded to the GP Practice directly, to support health care provision in Selby District. In order to confirm CIL support from the Council, further due diligence will be required. This will include assessing the potential for other funding streams including borrowing.
- 4.2.4 There are no revenue implications as a result of this report – all on-going revenue costs/income would be borne by the practice.

4.3 Policy and Risk Implications

Without any further investment in the surgery buildings the practice will struggle to continue to provide primary health care to the community in Sherburn.

The Case for investing CIL in healthcare provision in Sherburn is set out earlier in this report.

4.4 Corporate Plan Implications

Meets the objectives of Selby Corporate plan a great place to work, live and do business.

4.5 Resource Implications

Using CIL resource for this purpose meets the criteria for the use of CIL. It would mean that the CIL funding could not be used for other competing infrastructure priorities in the area.

4.6 Other Implications

None.

4.7 Equalities Impact Assessment

We do not anticipate any significant, negative impact from this project. The expansion and improvement project will deliver a range of positive benefits and outcomes for as set out earlier in this report. The expanded and improved

healthcare facilities should result in positive impacts for communities of protected characteristics such as age and disability, enabling an increased participation from these groups at the facility. The Practice and their multi-disciplinary project team will need to ensure an accessible project to meet key planning and building regulations requirements.

5. Conclusion

- 5.1 The Strategic case for investment of CIL monies into this project is strong.
- 5.2 The CIL investment will lever in significant investment from NHS England.
- 5.3 Sherburn is growing rapidly as a result of significant new housing and employment developments in recent years and there is a proven need to provide additional health-care provision to support this growing place.
- 5.4 There will be a range of clear benefits and outcomes from enabling this project to be delivered.
- 5.5 The Practice state that the project cannot be delivered without the CIL funding and investing CIL in health-care facilities linked to growth is an appropriate use of CIL monies. Financial Information is included in Appendix B (exempt information) which has been provided to the Executive on a confidential basis. Further due diligence is required to assess the funding gap.
- 5.6 The NHS has profiled the available funds for capital investment for Vale of York schemes. The only funding available for this project is the ETTF which ends in March 2022 and a precommitment into 2022/23. If this scheme is not supported by all partners now, the CCG will not exist from April 2022 and the scheme will be reprofiled and re-prioritised and bench-marked against all premises improvement proposals in the Humber, Coast and Vale further delaying the scheme.
- 5.7 With significant health and local government reform, if we do not support the delivery of this scheme using CIL then the momentum gained on this scheme will be lost and a significant risk will be created around the potential for future delivery.

7. Background Documents

None.

8. Appendices

Appendix A - Planning Permission – Approved Plans **(TO FOLLOW)**

Appendix B - Financial Information relating to the Practice and Proposed Development **(TO FOLLOW)**

Appendix B (Financial Information relating to the Practice and Proposed Development) is exempt from publication by virtue of paragraph 3 in Part 1 of Schedule 12A of the Local Government Act 1972 (as amended). If Members wish to discuss information contained within Appendix B, it will be necessary to pass the following resolution to exclude the press and public:

'In accordance with Section 100(A)(4) of the Local Government Act 1972, in view of the nature of the business to be transacted, the meeting be not open to the Press and public during discussion of the following item as there will be disclosure of exempt information as defined in Section 100(1) of the Act as described in paragraph 3 of Part 1 of Schedule 12(A) of the Act.'

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