

 <b>EXECUTIVE COMMITTEE</b> <b>17<sup>TH</sup> April 2013</b>		<b>Agenda Item No.</b> <b>10</b>
<b>Title</b>	HS2 Update	
<b>For further information about this report please contact</b>	Tony Ward - Development Services	
<b>Wards of the District directly affected</b>	Kenilworth Abbey, Park Hill, Stoneleigh, Cubbington and Radford Semele.	
<b>Is the report private and confidential and not for publication by virtue of a paragraph of schedule 12A of the Local Government Act 1972, following the Local Government (Access to Information) (Variation) Order 2006?</b>	No	
<b>Date and meeting when issue was last considered and relevant minute number</b>	Executive Committee – 13 <sup>th</sup> March 2013 Minute no	
<b>Background Papers</b>		

<b>Contrary to the policy framework:</b>	No
<b>Contrary to the budgetary framework:</b>	No
<b>Key Decision?</b>	No
<b>Included within the Forward Plan? (If yes include reference number)</b>	No
<b>Equality &amp; Sustainability Impact Assessment Undertaken</b>	No (If No state why below)
Not required at this stage.	

Officer/Councillor Approval		
Officer Approval	Date	Name
Chief Executive/Deputy Chief Executive	08.04.13	Chris Elliott/ Bill Hunt/ Andrew Jones
Head of Service	08.04.13	Tracy Darke
CMT	08.04.13	CMT
Section 151 Officer	08.04.13	Mike Snow
Monitoring Officer	08.04.13	Andrew Jones
Finance	08.04.13	Jenny Clayton
Portfolio Holder(s)	08.04.13	Michael Doody, John Hammon
Consultation & Community Engagement		
Insert details of any consultation undertaken or proposed to be undertaken with regard to this report.		
Final Decision?		Yes
Suggested next steps (if not final decision please set out below)		

## **1. SUMMARY**

1.1 The purpose of the report is to update members on the current position of the Council's continuing opposition to the Government's High Speed Rail proposal (HS2). It provides the information required to decide this Council's position regarding its future engagement with 51M and any resources it may wish to commit going forwards.

1.2 The report :-

- updates members regarding the overall campaign of opposition(including the outcomes of the recent Judicial Review)
- outlines financial provisions required relating to the Judicial Review process and those that may be deemed appropriate to mount an appeal against the Judicial Review decision
- sets out Warwick District's possible future budgetary provisions (other than the Judicial Review / any possible involvement in an appeal) considered necessary to continue opposition to HS2

## **2. RECOMMENDATION**

2.1 That Executive notes the financial position in respect of recent work in relation to the Judicial Review and agrees the allocation of a further £40,000 to cover the worst case estimate of total costs related to this element of the proceedings, financed from the Planning Reserve.

2.2 That Executive agrees that the Council should continue with the 51M consortium of Authorities as part of the appeal against the findings of the Judicial Review.

2.3 That the Executive agree to the allocation of a further (maximum contribution)of £30,000 from the Planning Reservein order to provide a meaningful contribution towards an appeal by the 51m consortium of Authorities against the findings of the Judicial Review.

2.4 That Executive agrees to the allocation of a further £30,000 financed from the Planning Reservefor the purpose of any future work-streams that may be necessary in continuing opposition to HS2.

2.5 All agreed funding above, to be closely monitored and utilised as necessary with authority to spend delegated to the Chief Executive and Head of Development Services in consultation with the Leader and Development Portfolio Holder.

## **3. REASONS FOR THE RECOMMENDATION**

3.1 Whilst Warwick District remains opposed to the HS2 proposal it is appropriate that Members have the opportunity to review our current financial obligations and consider any potential future budgetary requirementsrelating to this particular course of action.

- 3.1 Recommendation 2.1 sets out the worse-case scenario in relation to the financial provisions necessary to conclude the Judicial Review element of the legal proceedings that have been mounted against the HS2 proposal(see appendix A).
- 3.2 Recommendation 2.2 seeks Executive approval for the Council to be part of the appeal by 51M against the Judicial Review findings.
- 3.3 Recommendation 2.3 sets out budgetary provisions that the Council may wish to endorse/ approve to provide a contribution to an appeal against the Judicial Review decision (see appendix B). If this course of action is agreed then it is intended that this element will be 'capped' as a maximum amount in order that WDC is not exposed to any additional / higher contributionpertaining to a possible under estimation of costs or any adverse costs should the appeal be unsuccessful.
- 3.4 Recommendation 2.4 will ensure that there are budgetary provisions available for future work-streams (not related to the Judicial Review or any Appeal against the JR) that may be necessary in continuing opposition to HS2.
- 3.5 This finance will be closely monitored and utilised as necessary with authority to spend delegated to the Chief Executive Head of Development Services in consultation with the Leader and Development Portfolio Holder.

#### 4. **POLICY FRAMEWORK**

- 4.1 The Council's position opposing the implementation of the HS2 proposal is consistent with its overall visionand purpose to help make theDistrict a great place to live work and visit as set out in the Sustainable Community Strategy.

#### 5. **BUDGETARY FRAMEWORK**

- 5.1 In 2010 this Council resolved to oppose the HS2 proposal and agreed a budget of £100,000 towards the Council's costs relating to HS2. As well as contributing towards the costs of undertaking a Judicial Review this finance has also been utilised to encompass both the commissioning, through 51m, of technical/legal expertise to prepare and submit representations to a variety of HS2 consultations, the Government's Transport Select Committee as well as general campaigning / lobbying of Members of Parliament and other agencies and Government Departments (Treasury)to raise awareness of the many issues of concern arising out of the HS2 proposal.
- 5.2 The Judicial Review has required substantial funding to help probe many of HS2's shortcomings, its processes and the legality/legitimacy (see appendix A).
- 5.3 There has been an overspend on the Judicial Reviewbudget (see appendix C), however the approach of working within 51m has clearly been the only

realistic way of being in a position to mount a cost effective and meaningful challenge to the HS2 project, particularly when viewed against the overall cost incurred (over £1million thus farspent for all matters by 51m).

- 5.4 Of the original £100,000 the Council has paid out £102,000 to date, with a further £17,000 due to be paid in respect of the Judicial Review. In addition, possible costs against 51M in respect of the Judicial Review will increase the Council's liability by a further, estimated maximum, of £20,000.
- 5.5 Previous reports have suggested that any additional HS2 funding could come from the Planning Reserve. This currently has an unallocated balance of £397,000. As will all reserves, the balance on this reserve, and to what extent it needs any additional allocation (if possible), will be considered as part of future budget reports.
- 5.6 The total additional budgetary allocations proposed from the Planning Reserve for HS2 within this report are:-

Judicial Review further costs	£40,000 (recommendation 2.1)
Appeal against Judicial Review	£30,000(recommendation 2.3)
Continuing HS2 work	£30,000(recommendation 2.4)
<b>Total</b>	<b>£100,000</b>

## 6. **ALTERNATIVE OPTION(S) CONSIDERED**

- 6.1 The cost sharing through 51m has enabled the consortium of authorities to mount a unified and searching examination of many of the elements of the HS2 proposal. It is however timely (given the recent findings of the Judicial Review set out in appendix A) for this Council to review its stance with regard to continued opposition and consider the implications it may have on the Council's financial resources.
- 6.2 The Council may wish to retire from the campaign against HS2 which may be perceived as a fragmentation of the 51M organisation with ramifications that may not be in the long term interests of the campaign or of the District as a whole.
- 6.3 The Council can choose (as is recommended) to support WDC's continued financial input to the intended appeal (see Appendix B), in doing so it will maintain a meaningful position within the 51M consortium and send a message to the Government as well as the many concerned residents/ interests that it intends to continue the fight. The ultimate aim of continuing resistance is to question the financial and environmental legitimacy of HS2 and in doing so influence the future prospects its implementation.

## 7. **BACKGROUND**

- 7.1 Warwick District Council resolved in 2010 to oppose HS2 and agreed to work with other local authorities as part of the 51M group (a consortium

of local authorities opposed to the HS2 Proposals) which is providing a vigorous and co-ordinated opposition to the scheme.

- 7.2 As part of this opposition, the 51M alliance of local authorities (and other parties) has submitted evidence in support of a Judicial Review of the Government's decision to progress the HS2 rail proposal. The Judicial Review outcome was issued in March 2013, setting out that it had failed.
- 7.3 HS2 Ltd is proceeding to further develop the project in order to solicit the legal powers required to build the railway (via a hybrid bill intended to be put before Parliament by the end of 2013). It is anticipated that if the hybrid bill is approved work will start on the line in 2017 with the railway between London and Birmingham becoming operational in 2026.
- 7.4 It is the intention of 51M to mount a further legal challenge (appeal) against the findings of the recent Judicial Review in order (at best) to cause enough delay in the proceedings to improve the chances of the abandonment of HS2, or (at least) to seek improvements to any mitigation or compensation that may come forwards as a consequence of its implementation.
- 7.5 Hillingdon, Buckinghamshire, Camden and Chiltern Councils have stated that they are going to proceed with an appeal (and if necessary) finance this from their own resources. Other Councils have however pledged financial assistance to a lesser degree in order to share the burden and continue to signal the solidarity of the 51M consortium. Warwick District will have to decide if it wants to remain a key player within this group and (if so) at what level it may wish to commit further financial resources.

### **The Judicial Review**

- 1.1 The Judicial Review took place in December 2012 and involved a Legal Challenge in the High Court. In brief 51m and Co- petitioners lost on 9 out of the 10 grounds of challenge. The Findings of the Judicial Review are set out in a brief synopsis below
- 1.2 The Judicial Review involved an eight day hearing in the High Court. Early estimates of the cost of these proceedings were based on a shorter amount of Court time which is the main factor accounting for the escalation of costs with regard to this facet and the impact on the expenditure of Warwick District Council.
- 1.3 The findings of the Judicial Review were disappointing; however 51M are to appeal against this determination. A brief synopsis of the key elements of the findings is set out below.
- 1.4 Of the 10 broad areas of challenge made against HS2, the court has ruled in the government's favour on nine of these. The judge:
  - dismissed challenges to the fairness and lawfulness of the 2011 consultation on HS2 strategy and the phase one route
  - rejected challenges that the government was required to comply with the Strategic Environmental Assessment (SEA) Directive
  - dismissed challenges that the government failed to comply with the Habitats Directive
  - dismissed the challenge that the hybrid bill process could not comply with the Environmental Assessment Directive
  - dismissed the challenge that the government is required to present the environmental impacts of the entire Y network to Parliament alongside the phase one bill
  - dismissed challenges that the government has failed to comply with the Public Sector Equality Duty
  - dismissed challenges that the Secretary of State's decisions on Euston, the HS1 link, and the Heathrow spur were irrational
  - dismissed the challenge that the Secretary of State has fettered his discretion, and predetermined the outcome of future aviation strategy
  - dismissed the challenge that the government failed to properly consider the proposed route alternative submitted by the Aylesbury Park Golf Club claimants in response to the 2011 consultation
  - upheld the challenge that the consultation process was unfair, because not enough information was provided to consultees and the criteria by which compensation options were considered were not adequately explained - he also found that the government had not fully considered HS2 Action Alliance's detailed consultation response on compensation

### **Financial Implications**

- 1.5 To date the Judicial Review has cost this Council approximately £41,000, bringing the total paid out in respect of HS2 to £102,000 compared to the

original agreed budget of £100,000. However, as a consequence of an under-estimation of the legal fees and the time required in Court we are obliged to find a further £17,000 in order to pay our share of 51m's costs for presenting this challenge. In addition to this we are also exposed to paying the Court time and legal fees of the Government. It is estimated that the worst case scenario for this element is a further £20,000.

- 1.6 It should be noted that in the event that an appeal is successful the £20,000 WDC costs figure will be reduced as we would not then be liable for paying the costs of the Government at the Judicial Review regarding any of the grounds that we may ultimately be successful on at appeal.
- 1.7 The worst case should therefore be the need for an additional £40,000 (rounded up) to increase the additional budget for HS2 to finance the remaining costs of the JR.