

Decision under Delegated Powers

Officer Requesting Decision

Regeneration and Economic Development Officer

Officer Making the Decision

Head of Planning & Regeneration

Recommendation

That a Section 278 Agreement be signed to enable works to start on the public highways to deliver the public realm improvements proposed by the Bedford Square Gateway Project.

Reason

The S278 Agreement is required to enable works to start on the public highways to deliver the public realm improvements proposed by the Bedford Square Gateway Project. The S278 Agreement has to be signed both by the Borough Council and Leicestershire County Council, as the local Highway Authority.

Authority for Decision

Cabinet Minute 101 2020/21 refers that authority be delegated to the Head of Planning and Regeneration to enter into a Section 278 Legal Agreement with Leicestershire County Council, along with any other legal obligations necessary, to prepare the Bedford Square Gateway scheme for implementation.

Decision and Date



10 February 2021

Background

A Section 278 Agreement (S278) is a section of the Highways Act 1980 that allows developers (in this case, Charnwood Borough Council) to enter into a legal agreement with the Highway Authority (in this case, Leicestershire County Council) to make permanent alterations or improvements to a public highway. In the case of the Bedford Square Gateway Project, this will include improvements to the public realm such as widening pavements, narrowing the road carriageway, installing raised tables and road crossing points and changes to the on-street car parking arrangements.

Work affecting the highway can only begin when both the following have happened:

-) S278 agreement is signed by the developer and the Highway Authority, with some form of bond or surety agreed.
-) All pre-commencement requirements listed in the S278 agreement have been met and approved by the Highway Authority.

Work on the public highway is unable to start without the necessary approval in place and the Highway Authority reserves the right to take legal action against a developer. The grant of technical approval is not permission to commence works.

The S278 agreement is normally used to allow developers to employ a road works contractor and for that contractor to work on the existing public highway in the same way as if the highway authority were carrying out works. The developer is responsible for all aspects of the works on the public highway, from the design through to supervising construction and ensuring that the works are completed to the satisfaction of the Highway Authority.

The Borough Council is required to secure by way of deposit with the Highway Authority the sum of £200k to secure the Highway Authority against the risks of the Borough Council defaulting on their obligation to deliver the works in accordance with the terms of the S278 Agreement. Following the issue of the Provisional Certificate (normally at the end of the construction works) the Highway Authority will repay £100k (with interest) to the Borough Council and when the Final Certificate is issued (normally 12 months after the completion of the construction contract), the Highway Authority will repay the remaining £100k (with interest) to the Borough Council.

The Borough Council may be required to pay an inspection fee on execution of the S278 Agreement in respect to the costs incurred by the Highway Authority in inspection design checking and administration of the highway works. The sum required to be paid, if any, has yet to be clarified by the Highway Authority.

The Borough Council is also required to effect public liability insurance with an insurer in the minimum sum of £5m upon execution of the S278 Agreement, to include indemnity with a maximum excess of £1k against any legal liability for damage loss or injury to any property or any persons as a direct or indirect result of the execution and maintenance of the highway works or any part thereof and the Borough Council shall ensure that the Highway Authority's interests under this agreement are endorsed on the insurance policy. The Borough Council currently has public liability cover of £25m, which is sufficient to meet the requirements of the S278. However, the Council's policy has an excess of £5,000 which does not meet the requirements. The matter is currently being discussed with the Council's broker with a view to complying with the provisions in the S278 Agreement.

The Borough Council has already paid the Highway Authority a sum of £1,000 for executing the S278 Agreement in respect of the legal costs of preparing and entering into the S278 Agreement.

Comments from HR

N/A

Financial Implications

There is already provision in the current Capital Plan for the scheme and therefore there are no further financial implications.

Risk Management

There are no significant risks arising from this decision.

Risk Identified	Likelihood	Impact	Overall Risk	Risk Management Actions Planned
That the Borough Council does not comply with the S278 Agreement.	Unlikely (2)	Significant (2)	Low (4)	Routine monitoring of the S278 Agreement.

Key Decision

No

Background Papers

Draft S278 Agreement document, 8 December 2020