

Report to the Cabinet

Report reference: C-042-2021/22
Date of meeting: 07 February 2022



Portfolio: Planning & Sustainability – Cllr Bedford

Subject: Harlow and Gilston Garden Town – Future Leadership & Governance

Responsible Officer: Ione Braddick (01992 564205).

Democratic Services: Adrian Hendry (01992 564246).

Recommendations/Decisions Required:

- (1) Epping Forest District Council agrees 'in principle' to explore the creation of a Harlow & Gilston Garden Town Joint Committee, consisting of representation by all five Partner Councils.**
- (2) The details of the constitution, priorities and operating model of the proposed Joint Committee will return to Epping Forest District Council for further consideration.**

Executive Summary:

The Harlow & Gilston Garden Town (HGGT) will enable approximately 16,000 new homes by 2033 with an additional 7,000 delivered beyond that. To bring these homes forward the Garden Town will require over £1.7 bn of infrastructure investment into transport, education, healthcare, emergency services, community facilities, open space, sports and leisure, utilities and flood defences.

The growth will cross the boundaries of the five council Partners (which comprise East Hertfordshire, Epping Forest and Harlow District Councils, and Essex and Hertfordshire County Councils) and the Garden Town initiative was originally established under the 'Duty to Cooperate' arrangements to reach common agreement between those partners.

The scale of planned activities poses a significant delivery challenge to the partner Authorities and this report outlines the options for the future governance of the Harlow & Gilston Garden Town (HGGT) project. It sets out the work carried out by officers, the HGGT Board and the governance task and finish group (T&F) established by that Board, in appraising options and their recommendation, in principle, to explore the proposal of a HGGT Joint Committee. This report recommends Cabinet/Executive Committee approval, in principle, of that decision to the establishment of a HGGT Joint Committee.

Since June 2021, the five council Partners have been undertaking a formal review of the governance arrangements for their HGGT partnership project. As part of this review, the T&F Group was established, consisting of one Member and one Senior Officer representative from each of the five partner authorities.

At its meeting on 13th July 2021, having explored a number of options, the T&F Group instructed officers to undertake further work to provide a detailed proposal for the establishment of a Joint Committee with the ambition of establishing this by May 2022.

This work has and continues to progress assisted by input from HGGT legal advisers, Weightmans LLP.

In order to progress work to the next detailed stages and to enable implementation of new formalised governance arrangements for the beginning of the new municipal year, a formal decision by all five Partners on the principle of the new governance arrangements for HGGT is required.

Reasons for Proposed Decision:

In order to progress work to the next detailed stages and to enable implementation of new formalised governance arrangements for the beginning of the new municipal year, a formal decision by all five Partners on the principle of the new governance arrangements for HGGT is required.

Other Options for Action:

Not to agree to explore the creation of the HGGT Joint Committee and return to Cabinet with details of the constitution, priorities and operating model of the Joint Committee would be contrary to the Partner Councils Members and Officer Task & Finish Group instruction, and would mean the work to formalise and implement new governance arrangements at the beginning of the municipal year would not take place.

Report:

Introduction

1. In early Summer 2021, a piece of research was commissioned by the HGGT team on behalf of the Partners. The purpose of the research was to formally review the Partners' understanding of the purpose of the HGGT partnership to ensure the significant growth and investment through both the public and private sectors will enable achievement of the Garden Town Vision. The research work was completed in July 2021 and the Final Report is attached as Appendix 1 to this report.
2. The interim findings of the report were reported to the HGGT Board at its meeting on 14th June 2021. It was accepted that there were key drivers for a governance refresh which included:
 - Lack of formal governance arrangement and inequitable risk share between the Partners:
 - The necessity for a strategic 'single view' oversight of the Garden Town Programme;

- Speedier agile decision-making to match the pace of the Project and the importance of current growth priorities;
 - Commitments to central government to accelerate growth to a specific housing trajectory by March 2025; and
 - A greater appetite for dealing with difficult strategic cross-boundary issues
3. At that meeting the Board also considered a report on governance and next steps, and agreed the following recommendations:
 - The establishment of a T&F Group with the primary objective of making recommendations on interim governance arrangements and, in due course, developing the future governance structure for the HGGT partnership.
 - That the T&F Group membership is comprised of two representatives from each of the five partner local authorities – being a lead Member and a lead officer.
 - That the T&F Group advises the HGGT Board to make recommendations to the Partner Authorities’ to take the necessary formal decisions, including enabling any appropriate delegations, for the governance structure for the HGGT partnership with the aim of submitting draft proposals in late summer 2021, with any formal decisions by the Partner Authorities to commence scheduling by no later than October 2021 with a view to implementation in the current financial year.
 4. Following the HGGT Board meeting of 14th June 2021, the HGGT Governance Review T&F Group was established alongside officer working groups to look at key issues. The HGGT legal advisors, Weightmans also support and provide advice.
 5. The following sections of the report set out the case in governance arrangements, the options considered by the T&F Group and next steps in the process.

HGGT Governance Arrangements – The Case for Change

6. HGGT’s ambition is to deliver 16,000 new homes by 2033, and 7,000 more in the years that follow, creating four new Garden neighbourhoods in and around Harlow and the supporting transport (and other) infrastructure to sustain growth on this scale.
7. The project has been managed through an informal collaborative process with an advisory Board which has no decision-making powers but rather endorses guidance and approaches with recommendations (where necessary) presented to each Council for approval and decision through their respective existing constitutional decision-making processes.
8. There is a significant risk that unless a more streamlined and robust governance structure is put in place that the Council’s strategic ambition for the Garden Town will not

be delivered to trajectory and to the garden town vision each Council partner has agreed.

9. Also, the Council's individually and collectively are already exposed to considerable risk in terms of governance, aspirations, and finances due to a failure to formally agree risk share. There is no overarching agreement setting out how those risks are to be allocated and shared between the partners.
10. It is crucial to note that whatever governance model is used for the project moving forward there will doubtless be a need to commit more dedicated resources/delivery teams to the Garden Town project as delivery work intensifies which is then likely to reduce.
11. It is also likely that blended delivery mechanisms (governance structures and contractual collaboration) will be proposed to achieve economies of scale. Any proposed process will need to take account of the statutory and geographic responsibilities currently held by each partner.

Governance Options Considered

12. The T&F Group in July 2021, considered an assessment of four governance options provided by HGGT legal advisors, Weightmans.

13. The four options were as follows:

14. ***Option 1 – Status Quo – Informal Partnership***

- **Key Features:** - Informal arrangement, HGGT Board has no decision-making powers and underpinned by non-binding memoranda of understanding not legally binding agreements between the Councils.
- **Key Pros:** - Flexible, retains autonomy of decision making for the Councils, relatively inexpensive to operate
- **Key Cons:** - Slow and cumbersome decision making, significant exposure to risk without clear sharing mechanisms, lack of clear focus on delivery of the project

15. ***Option 2 – Joint Committee/Lead Authority supported by Inter Authority Agreement / Contractual Joint Ventures***

- **Key Features:** - Joint committee with members appointed by all Councils and responsibilities in relation to the project agreed by all Councils, underpinned by resourcing through a Lead Authority Model and an Inter Authority Agreement setting out which authority will lead on key aspects of the project (e.g. Town Centre or Sustainable

Transport STCs), how decisions will be made, how risks will be allocated and shared. Contractual joint ventures/collaboration agreements would be utilised between the Partners for delivery on a project by project basis (e.g. Sustainable Transport Corridors). County Councils would continue to act as local highway authority and District Councils would continue to act as local planning authority.

- The membership of the joint committee would need to be agreed but would likely be 1 or 2 members appointed by each authority. Voting would normally be in accordance with usual local authority principles of simple majority with chair exercising casting vote.
- **Key Pros:** - Quicker decision making, tried and tested model, relatively cost effective and quick to establish (6-12 months).
- **Key Cons:** - The HGGT Partnership lacks critical resources / staff and annual budgets dedicated to HGGT delivery teams (policy/oversight/programme management functions); Partners need to make tough decisions on resourcing with relative speed and urgency; risk of Joint Committee not functioning effectively without equitable share of resources and financial risk by partners hence we recommend Lead Authority Model/IAA agreement.

16. **Option 2A - Joint Planning Committee**

- **Key Features:** - Potentially three of the Partners, namely the district Councils and local planning authorities for the Garden Town (i.e. East Herts, Epping Forest and Harlow) would merge their planning functions by delegation to a single joint planning committee (“JPC”). The JPC would comprise members from all the constituent LPAs who would make decisions (whether to grant or refuse) planning applications within the Garden Town or potentially straddling Garden Town boundaries. This option can be utilised alongside Option 2: Joint Committee or as a standalone proposal.
- **Key Pros:** - Greater prominence of HGGT and Vision, effective coordination and enhanced expertise of both members and officers dedicated to Garden Town JPC; aligned with Garden Town Principles and Partner Objectives to deliver cohesive Garden Town communities through a consistent approach to strategic planning issues.
- **Key Cons:** - Perceived loss of planning powers or democratic deficit; cost v benefit analysis would be required to justify a Joint Planning Committee

17. **Option 3 – Locally Led Development Corporation (“LLDC”)**

- **Key Features:** - There are different types of development corporation. They do not have longevity and are not intended as long term or legacy solutions. Urban and Mayoral development corporations have not been included as they are centrally led and cede control of planning and compulsory purchase powers to central government (via Secretary of State). A locally led new town development corporation, with planning and

CPO powers, set up specifically to enable local oversight and delivery of new town developments is ostensibly suited to the objectives and principles of delivering a new Garden Town. Numerous considerations such as the current status of the project, ceding powers, the necessity and costs of merging in-house functions of the partners (e.g. policy, development management, capital delivery teams etc.), would need to be explored. High capital and revenue costs combined with the complexity of setting up a LLDC which includes two rounds of consultation and a parliamentary process warrant further appraisal and financial modelling before proceeding.

- **Key Pros:** - Clarity of roles and functions; single entity with a clear strategic focus on delivering the Garden Town Vision and developments; consistency of application of planning policy and principles; policy making, planning and compulsory purchase powers in a single entity.
- **Key Cons:** - Loss of control for individual Partner authorities, time and costs required to set up (from current position to a LLDC being operational estimate at two to three years); LLDCs subject to current reform by Government; most effective /appropriate in earlier stages of the project, complex to set up - need for a parliamentary order and extensive work prior to that being obtained.

18. **Option 4 Future Legacy Stewardship Body**

- **Key Features:** - The primary purpose of an FSB is to add value to the new community through the management and maintenance of community assets, open space and public realm and developing services required by residents. Typically, FSBs are constituted not for profit entities (e.g. land trust or community interest company among others). The role of a stewardship body is an evolving one. It is essential that stewardship is considered at planning application stages and that a long term stewardship strategy is aligned with the approach at planning application stage to secure stewardship of assets in perpetuity.
- **Key Pros:** Early planning for long term stewardship of community assets is an integral part of delivering a Garden Town in line with the established principles; vision and best practice; it is a necessity (not an option) to plan for long term stewardship; places the community centre stage in managing the assets and infrastructure of the Garden Town.
- **Key Cons:** Significant liabilities associated with long term maintenance of assets which are typically a developer responsibility and so further analysis required as to whether HGGT would wish to take on this liability or provide an oversight role; risk of fragmented stewardship and failure to realise its full potential to ensure the success of the Garden Town as a community.

Governance Options Recommendation

19. The HGGT legal advisors' report recommended that Partners proceed with **Option 2: HGGT Joint Committee plus lead local authority model**. This option was considered

to offer the best opportunity for the improved, streamlined and robust governance required to move forward with the appropriate programme and risk management in place. It was also considered to be achievable within a realistic timescale - anticipated to take 6-12 months (relative to the Partners commitment of time and resources).

20. Option 2 was considered to meet the Partners' view that the focus of the new governance arrangements needs to be on putting in place (i) appropriate policy to secure infrastructure contributions that enable the Garden Town growth and (ii) mechanisms for delivery and oversight of programme. On this basis, Option 2A – a joint planning committee was not considered to be desirable for the Partners' at this point in time.
21. The principal reason Option 3 - LLDC should not be pursued was due to the resources and time to set up such a body and the stage which the project has reached. The report noted that there are undoubtedly benefits of a LLDC but that given the circumstances and stage at which HGGT is, the pros are currently outweighed by the cons. The report noted that if the Partners wish to pursue and LLDC further this would not preclude a phased approach setting up a joint committee which could lead on the creation of a LLDC.
22. The report was clear that creation of a stewardship body would be essential whatever governance option is adopted and the Partners should include the work necessary to plan and set up such a body whichever governance model is adopted.
23. The T&F Group considered the Weightmans legal report and agreed Option 2, the establishment of a joint committee (JC), be taken to the next meeting of the T&F Group as a detailed proposal, and that the design and creation of a stewardship body should be brought forward as part of this option.
24. Following this meeting of the T&F Group, officers were instructed to undertake further work to develop a detailed proposal for the establishment of a Joint Committee and creation of a stewardship body.

Next Steps

25. If the recommendation is approved by the partner councils further work will be undertaken as set out below to progress to the detailed stages of working up the delegations and operating model of a Joint Committee.

Task	Who needs to do it	By when	Status
Agree joint committee responsibilities	Partner Councils	Working group negotiations July-April 2022	Underway

Draft Terms of Reference for JCC	Legal advisors – to be agreed by all Partner Councils	First Draft – September 2021	Underway
Draft rules of procedure for JCC	Legal advisors – to be agreed by all Partner Councils	First draft – February 2022	Underway
Draft Heads of Terms for Inter Authority Agreement (IAA)	Partner Councils / legal advisors	First draft – March 2022	Underway
Draft report to HGGT Board on proposed governance arrangements	HGGT team / legal advisors	Dec/January 2022	Underway
Final report to HGGT Board	HGGT team / legal advisors	June 2022	To be actioned
Draft final report to Councils	Partners / HGGT Team / legal advisors	July 2022	To be actioned
Draft report for Council executives and full councils	Partner Councils / legal advisors	July 2022	To be actioned
Executive approvals for joint committee and Inter Authority Agreement (IAA)	Partner Councils	July 2022	To be actioned
Council approvals / appointments for joint committee	Partner Councils	July 2022	To be actioned
Joint committee begins operation	Partner Councils / HGGT Team / legal advisors	Sept 2022	To be actioned

Resource Implications:

See above table of next steps, in particular for Partner Councils (which includes Epping Forest District Council) input and resource from officers and members.

Legal and Governance Implications:

Legal advisors involved in current work and further work to progress to detailed stages of working up delegations and operating model of a Joint Committee.

Safer, Cleaner and Greener Implications:

N/A

Consultation Undertaken:

Harlow and Gilston Garden Town (HGGT) commissioned an independent piece of stakeholder research into the value of the HGGT partnership in summer 2021. The work was commissioned to inform a discussion amongst partners about potential changes to HGGT's governance arrangements. The report at Appendix 1 sets out the findings from that research.

This stakeholder research was commissioned alongside a more technical piece of research examining the legal implications of a change to governance arrangements. The research took the form of:

- A guided tour of the Garden Town area with a member of the HGGT core team.
- Ten semi-structured interviews, lasting 45 to 60 minutes, with 20 officers across the five partner authorities.
- A group interview with the HGGT core team.
- A 90-minute workshop with the majority of interviewees to reflect on the emerging messages and develop the options.
- Meetings of the Project Steering Group, which was made up of colleagues from HGGT and lead officers from the five authorities.

Since June 2021 the five council Partners who have been undertaking a formal review of the governance arrangements for their HGGT partnership project. As part of this review, the Task & Finish Group was established, consisting of one Member and one Senior Officer representative from each of the five partner authorities.

At the meeting of the Task & Finish Group on 13th July 2021, having explored a number of options, the T&F Group instructed officers to undertake further work to provide a detailed proposal for the establishment of a Joint Committee with the ambition of establishing this by May 2022.

Background Papers:

- C-015-2018/19: Governance arrangements for Local Plan Implementation

Risk Management:

Equality Analysis:

The Equality Act 2010 requires that the Public Sector Equality Duty is actively applied in decision-making. This means that the equality information provided to accompany this report is essential reading for all members involved in the consideration of this report. The equality information is provided as an Appendix to this report.