

Subject: Developer Contributions – Interim Guidance
Date of Meeting: 17 February 2011
Report of: Strategic Director, Place
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Key Decision: Yes Forward Plan No: CAB18654
Wards Affected: All

FOR GENERAL RELEASE

1. SUMMARY AND POLICY CONTEXT:

- 1.1 This report updates the interim guidance on when and how Developer Contributions are sought in relation to development proposals. The updated guidance concerns 5 policy areas where contributions are commonly sought and which will benefit from updated guidance. It is important to note that there are a number of other areas where Developer Contributions are sought in relation to development proposals.
- 1.2 Whilst the guidance will provide developers with greater certainty and understanding on all five policy areas there is singular recognition of the need to respond flexibly to the rapidly changing housing market and the funding of affordable housing in particular. In terms of housing provision this guidance signals a significant change of approach. It reflects the need to make adjustments for the new funding model for affordable housing and recognises the potential offered by the new powers for local authorities to develop affordable housing. As explained further in paragraph 3.2.

2. RECOMMENDATIONS:

- 2.1 That the Cabinet approves the Interim Guidance on Developer Contributions (Attached as Appendix 1 – Supporting Documents) for: Affordable Housing, Local Employment and Training; Education; Open Space and Transport and travel, until such time that it is replaced by an Infrastructure and Developer Contributions Supplementary Planning Document that will be informed by new legislation.

3. BACKGROUND

Infrastructure and developer contributions

- 3.1 Developer contributions are secured at the time of granting planning permission to mitigate any negative impact of development and provide for appropriate contributions towards increased infrastructure and service demands. The contributions are secured through Planning Obligations under section 106 of the

Town and Country Planning Act 1990, which are sought where they meet the statutory tests of being necessary, directly related to the development in planning terms and fairly and reasonably related in scale and kind to the development. Such contributions, infrastructure provision or upgrades are sought in relation to scale and impact of development in accordance with the current adopted Local Plan and the policies within the emerging Core Strategy. The overall aim is to achieve sustainable development and to ensure development makes a positive contribution to the community and surrounding area.

- 3.2 The purpose of the Interim Guidance is to provide up to date interim technical guidance as to when and how different types of contributions will be calculated for five topic areas. The aim is to provide clarity and consistency on developer contributions until legislation on infrastructure provision is finalised at which point the Interim Guidance will be replaced by an Infrastructure & Developer Contributions Supplementary Planning Document that will provide further detail on all topic areas where contributions may be sought.

Scope of Interim Guidance Notes

- 3.3 The Interim Guidance, in the attached appendices, will set out the threshold and how payments are calculated for 5 different types of developer contributions and what the contributions will provide.

Affordable Housing

- 3.3.1 Affordable Housing will be sought through direct on site provision through approved Registered Providers or in exceptional circumstances a commuted sum towards off site provision may be considered. A methodology for calculating contributions for such exceptional circumstances towards off site provision has been prepared and is included in the Interim Guidance. This will help secure appropriate provision of affordable housing to meet the needs of the city.
- 3.3.2 The guidance also responds to changes in the way affordable housing is likely to be funded in future. The HCA has announced that they will not grant aid affordable homes secured through S106 agreements as this mechanism should fund the full costs. They also have reduced funding available for affordable schemes being brought forward by RSL's in the immediate future.
- 3.3.3 The loss of HCA funding for affordable housing secured through S106 agreements may affect the financing of market led housing schemes and negotiations concerning the number and type of affordable units secured on each site. The reduction of HCA funding available direct to RSL's nationally may also result in changes to the number of 100% affordable housing schemes commencing over the next two to three years.
- 3.3.4 In place of the current grant based funding of affordable housing the government anticipates that RSL's will use their significant land and property assets and rental income streams to borrow money commercially and to use this to bring forward new affordable housing. Larger RSL's are already using these mechanisms.

- 3.3.5 The government is also permitting Councils to borrow against their own housing land assets and guaranteed income streams (from rents from council housing) to borrow funds to build new housing. Brighton and Hove is investigating this option and a report was taken to Cabinet on 11th November 2010.
- 3.3.6 It will be essential for planning processes to be flexible in the short term to adapt to these changes in the funding of affordable housing.

Local Employment & Training

- 3.3.7 Obligations currently support providing a skilled workforce through targeted on site construction training requirements that provide local employment. The Interim Guidance also introduces a new area for contributions, namely that contributions are to be put towards a skills development programme which is part of a training project supporting apprenticeship and local employment needs in partnership with City College.

Education

- 3.3.8 The Interim Guidance provides clarification on contributions for local schools towards additional class room provision (in relation to key major schemes) or upgrade to resources, such as classroom equipment or on site play facilities.

Sport, Recreation & Play Space

- 3.3.9 This includes contributions to upgrade parks and other amenity space for sports, play provision or other community facilities with health, leisure and social benefits. Revised standards for space provision are included in this guidance, which have been revised in accordance with the findings of the Open Space, Sports and Recreation Study agreed at Cabinet Member Meeting July 2009.

Transport and Travel

- 3.3.10 The Interim Guidance clarifies how payments towards mitigating the impact of increased travel are calculated.

4. THE FUTURE OF DEVELOPER CONTRIBUTIONS

- 4.1 Legislation is already in place which would allow the local planning authority to secure infrastructure by way of a developer contribution. The legislation is referred to as the Community Infrastructure Levy Regulations (CIL). Before a wholesale move to a CIL system of contributions is progressed there are a number of themes which need to be brought together and to be in place.
- 4.2 Firstly, it is anticipated that more detailed legislation as part of the reform of the planning system will be emerging in support of the CIL approach to contributions. That legislation is likely to address the issue of providing greater control to local authorities. Secondly, there is a need for a robust local policy framework to support the transition to CIL. This work has been progressed through the emerging Core Strategy.

5. MONITORING AND REVIEWS

- 5.1 A monitoring process for securing contributions and the delivery of appropriate improvements shall continue, which in all cases ensure each contribution is wholly allocated to provide improvements in accordance with the s106 planning obligation. This process ensures a clear audit trail and assures developers who expect consistency as to how the contributions are utilised.
- 5.2 In recognition of the need to enable appropriate development during the current economic climate the Council has introduced a range of temporary measures that has allowed for reductions in certain types of contributions. The current process in allowing for temporary measures were in force throughout 2010 and allowed for a more balanced and flexible approach without compromising on provision towards necessary infrastructure delivery. The Council intends these temporary measures to be regularly reviewed to ensure continued consideration as well as a consistent approach to securing developer contributions and has therefore agreed to continue with the current approach which will be next reviewed at the end of June 2011.

6. CONSULTATION

- 6.1 Internal consultation has been undertaken and comments are included in this report.

7. FINANCIAL & OTHER IMPLICATIONS:

Financial Implications:

- 7.1 Commonly developer financial contributions (through Section 106 obligations) secure infrastructure and services created by the demand from new development including highway infrastructure; transport improvements and travel initiatives; education, health, community or recreation facilities and occasionally off-site ; affordable housing. The level of contribution will be related to the scale of the new development and its impact on the local environment. Any increased contributions received through amendments in methodology will be held and utilised in accordance with existing processes. The cost of producing the Interim Guidance on Developer Contributions will be met from existing budgets.

Finance Officer Consulted: Karen Brookshaw

Date: 21/01/11

Legal Implications:

- 7.2 Developer contributions are currently secured under the provisions of s106 of the Town and Country Planning Act 1990. Upon the coming into effect of the Community Infrastructure Levy Regulations on 6 April 2010 such contributions may only be secured if they are 1) necessary to make the development acceptable in planning terms 2) directly related to the development and 3) fairly and reasonably related in scale and kind to the development. The Regulations give detail as to how and when the levy may be charged and place further restrictions on the use of planning obligations.

- 7.3 Current Government guidance is contained in Circular 05/05: Planning Obligations which reiterates that s106 obligations are intended to make acceptable development which would otherwise be unacceptable in planning terms. The Circular also imposes tests which planning obligations must meet, being essentially those tests now set out in the Community Infrastructure Levy Regulations 2010 and set out above.
- 7.4 The government has recently announced that the Community Infrastructure Levy will be retained but will be subject to reforms that will provide greater control to local authorities over the funding of infrastructure. Such reforms, as stated in section 4. above, will be likely to be part of the reform of the planning system flowing from the introduction of the Localism Bill and consequent legislation. As noted in the report, the Interim Guidance will provide clarity and consistency on the provision of developer contributions until such time as the new legislation is finalised and a supplementary planning document adopted.
- 7.5 It is not considered that the report raises any adverse human rights implications.

Lawyer Consulted:

Hilary Woodward

Date: 21/01/11

Equalities Implications:

- 7.6 Developer contributions can provide wide community benefits and can be used to provide, for example, local employment, affordable housing, recreation space and education facilities.

Sustainability Implications:

- 7.7 The aim of developer contributions is to assist in enabling development to contribute towards the establishment of sustainable communities. The continuation of seeking contributions will ensure appropriate measures are secured to the wider infrastructure to help provide long-term sustainable development for the city.

Crime & Disorder Implications:

- 7.8 Developer contributions may be sought towards community safety initiatives such as improved lighting or CCTV.

Risk and Opportunity Management Implications:

- 7.9 Decisions on determining planning applications should take account of all material considerations including the provision of the infrastructure necessary to support the development. If development takes place without adequate contributions to infrastructure provision, a strain is placed on existing facilities to the detriment of the wider community and public resources.

Corporate / Citywide Implications:

- 7.10 Developer Contributions will continue to ensure that the council's policies on securing contributions towards infrastructure and services will help deliver the

Sustainable Community Strategy priorities to improve housing and affordability, promote sustainable transport and improve health and well being in the city.

8. EVALUATION OF ANY ALTERNATIVE OPTION(S):

- 8.1 In consideration of other options other than the production of interim guidance notes there are options to simply continue relying of the existing adopted Local Plan policies. This is reasonably sufficient as the council already currently secures a range of contributions; however the Local Plan policies are not sufficiently worded to justify the introduction for securing contributions to a local employment training programme which is now a priority for the council. In addition a formula for calculating commuted sums in lieu of on site provision of affordable housing is also included as further guidance.

9. REASONS FOR REPORT RECOMMENDATIONS

- 9.1 The recommendation allows the council to be further informed during in the process of determining planning applications when seeking developer contributions.
- 9.2 The Interim Guidance has been produced taking into account the need for updated advice, current practice and priority areas for seeking future developer contributions.

SUPPORTING DOCUMENTATION

Appendices:

1. Supporting documents

Documents In Members' Rooms

None

Background Documents

None