

Subject:	Developer Contributions - Temporary Recession Measures and updated Technical Guidance		
Date of Meeting:	22 December 2011		
Report of:	Strategic Director, Place		
Contact Officer:	Name:	Debra May	Tel: 29-2295
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Key Decision:	No		
Ward(s) affected:	All		

FOR GENERAL RELEASE

1. SUMMARY AND POLICY CONTEXT:

- 1.1 To meet planning policy requirements to enable the granting of planning permission for development proposals it may be necessary for developers to mitigate potential negative impacts. This may be achieved by requiring developer contributions that are used to provide or upgrade infrastructure. In recognition of the need to enable appropriate development during the current economic climate the Council introduced a range of temporary 'recession' measures in early 2010 that prioritised and allowed for reductions in certain types of developer contributions. These temporary measures provide a flexible approach without compromising on the provision of necessary infrastructure in order to enable development to be acceptable and proceed. These measures have been updated to reflect current priorities for developer contributions.
- 1.2 Revised Technical Guidance has been produced which has been updated to inform on the main policy areas where developer contributions are commonly sought with additional advice based on the existing planning policies in the adopted Brighton & Hove Local Plan. The current priorities when seeking developer contributions and the updated guidance will provide officers and developers with greater certainty and understanding on the main types of developer contributions and how these are calculated.

2. RECOMMENDATIONS:

- 2.1 That the Cabinet Member for Planning, Employment, Economy & Regeneration (PEER) approves the revised Developer Contributions Temporary Recession Relief Measures and agrees changes to reflect revised Council priorities in the nature and type of developer contributions that will be sought when considering issues of viability on development sites.
- 2.2 That the Cabinet Member for PEER approves the updated Technical Guidance on Developer Contributions attached at Appendix 1.

3. RELEVANT BACKGROUND INFORMATION/CHRONOLOGY OF KEY EVENTS:

- 3.1 Developer contributions are secured at the time of granting planning permission to mitigate negative impacts of development and provide for appropriate contributions towards such necessary physical, environmental and social infrastructure that if not met may mean development proposals might otherwise be refused.
- 3.2 The contributions are secured through Planning Obligations drafted under section 106 of the Town and Country Planning Act 1990 and in accordance with the statutory criteria set out in Regulation 122 of the Community Infrastructure Levy Regulations 2010 (as amended) which provide that Obligations must meet the tests of being:
- (a) necessary to make the development acceptable in planning terms;**
 - (b) directly related to the development; and**
 - (c) fairly and reasonably related in scale and kind to the development.**
- 3.3 Contributions are sought in relation to scale and impact of development in accordance with the current planning policies in the adopted Brighton & Hove Local Plan 2005 and the policies within the emerging City Plan. The overall aim is to achieve sustainable development and to ensure development makes a positive contribution by addressing negative impacts on the community and surrounding area. This is an approach also supported by the Localism Act 2011.

Priorities for Developer Contributions Temporary Recession Relief Measures

- 3.4 The economic recession has had a significant impact on the development market and the Council has been responsive to the need for understanding and flexibility in the short term to reflect current market conditions. In certain circumstances planning obligation requirements may impact on the viability of a development either by combined levels of requirements or abnormal site costs.
- 3.5 Temporary recession measures were introduced in April 2010 and were renewed in February 2011. These measures allowed for a more balanced and flexible approach to contributions in recognition of the current economic climate. This approach needs to be renewed without compromising on the need to meet policy expectations for providing towards delivery of necessary infrastructure. With a continued recognition of this need the Council can consider where it is appropriate to be flexible with respect to developer contributions or through a flexible approach to the implementation of policy.
- 3.6 Where the Council considers that viability of development is affected the priorities when seeking developer contributions will be:

1. Sustainable Buildings

Requirements for appropriate sustainable development and contributions will be sought, for major applications only, in accordance with existing planning policy, additional guidance in the Sustainable Building Design Supplementary Planning Document (SPD) 08 (adopted by the Council on 5th June 2008) and pertinent Planning Inspectorate decisions.

2. Affordable Housing

Affordable Housing will be sought in accordance with existing planning policy and the thresholds therein with a requirement for 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 towards off-site provision in exceptional circumstances is included in the Developer Contributions Technical Guidance. The Guidance has also been further amended and now includes reference to 'Affordable Rented' tenure.

3. Local Employment & Training

Obligations will be sought for major applications only, to support providing a skilled workforce. This will be achieved through targeted on site construction training requirements providing local employment and for financial contributions towards a skills development partnership programme as part of a training project supporting apprenticeship and local employment needs. The financial contributions to support the programme will be calculated in accordance with approved methodology detailed in the Developer Contributions Technical Guidance.

Other Temporary Relief Measures

3.7 Sustainable Transport

The threshold on which sustainable transport contributions are sought will remain as a net gain of 5 or more residential units. Where the Council seeks to secure Car Free Housing in accordance with policy H07, financial contributions for amendments to Traffic Regulation Orders (TRO's) are no longer sought. The Council will however, continue to attach a condition whereby occupiers within the Controlled Parking Zone (CPZ) will be ineligible for parking permits. The approach to allow developers to carry out, where appropriate, highways works under s278 agreements rather than through financial contributions will be continued.

3.8 Nature Conservation & Development

Securing requirements towards on-site nature conservation and biodiversity measures in accordance with adopted SPD 011 will be continued. The requirement for additional financial contributions as identified in Annex 6 of SPD 011 will not be applied and will remain suspended.

Other Measures

3.9 Where a scheme is acceptable and a s106 is considered to be necessary to mitigate impact the following relief measures will continue:

3.10 Waiving of 'indexation' on financial contributions.

Currently the RPI (Retail Prices Index) is applied to contributions from the date the s106 is signed to date of payment. This clause will be omitted from s.106 agreements.

3.11 Deferral of contributions

The payment of contributions or provision of infrastructure on the date of commencement of the development may be deferred to a later date, for example on the occupation of the development. The payment of contributions on 'commencement of development', was previously commonly sought.

3.12 Review of temporary recession measures

It is intended for the recession relief measures to be regularly reviewed. It is proposed that the current measures to be next reviewed in December 2012.

3.13 Development viability

Developers will be advised that where the Council considers that development viability would be compromised by developer contributions these issues should be raised as soon as possible and detailed cost information should be submitted to the Council at the earliest opportunity. This may help reduce delay where a dispute arises and so that the outcome of negotiations, are clearly understood by all parties before agreeing to enter into and finalising a planning obligation. The Council may require a full financial appraisal of the proposal signed by an appropriately qualified and independent financial professional to be made available to substantiate the claim. In all cases, the onus of proving the non-viability of a development is on the developer.

3.14 Other developer contributions

There will be no changes to other contributions and these will continue to be sought where necessary in accordance with existing planning policy as set out in the Brighton & Hove Local Plan and further detailed advice in the Developer Contributions – Technical Guidance.

Revised Developer Contributions - Technical Guidance

3.15 The technical advice in the attached appendices is an amplification of the existing planning policies in the adopted Brighton & Hove Local Plan. The guidance (previously titled Interim Guidance and approved by Cabinet 17th February 2011) has been updated for the main topic areas where the Council may seek developer contributions and sets out the thresholds, and how payments are calculated and what those contributions will provide. It is important to note that the Technical Guidance covers the main types of contributions that are sought but that there are many potential areas where developer contributions may also be required as set out in the adopted Brighton & Hove Local Plan. Where the viability of development may be affected then contributions should be sought in the Priority areas as identified above.

3.16 Affordable Housing

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 Technical Guidance.

3.17 Local Employment & Training

Contributions currently support providing a skilled workforce through targeted on site construction training requirements and for financial contributions towards a skills development partnership programme. The methodology for calculating the financial contributions to support the programme are included in this Technical Guidance.

3.18 Education

The Technical Guidance provides clarification and the methodology for calculating contributions for local schools. The contributions may contribute towards additional class room provision (in relation to key major schemes) or upgrade to resources, such as classroom equipment or on site play facilities.

3.19 Sport, Recreation & Play Space

The Guidance includes a breakdown of the standards for open space provision and methodology for assessing contributions that will be spent towards upgrading parks and other amenity space for sports, play provision or other community facilities with health, leisure and social benefits.

3.20 Transport and Travel

The Technical Guidance clarifies how payments towards mitigating the impact of increased travel are calculated. It should be noted that as a temporary recession relief measure the development threshold on which sustainable transport contributions are sought will be a net gain of 5 residential units and above. This approach will be further reviewed in December 2012.

3.21 Sustainable Building Design

Requirements for appropriate sustainable development and contributions will be sought in accordance with requirements identified in the Sustainable Building Design Supplementary Planning Document (SPD) 08 adopted by the Council 5th June 2008

3.22 Nature Conservation and Development

Contributions should usually be sought in accordance with requirements identified in the Nature Conservation and Design Supplementary Planning Document (SPD) 011 adopted 25th March 2010. However, it should be noted that as a temporary recession relief measure Annex 6 (Calculating Developer Contributions) is suspended and financial contributions will not be sought. This approach will be further reviewed in December 2012.

4. COMMUNITY ENGAGEMENT AND CONSULTATION

- 4.1 Consultation with the wider community will be undertaken as part of a formal process when consulting on the emerging City Plan in 2012 and will follow the recommendation set out in the Statement of Community Involvement.

5. FINANCIAL & OTHER IMPLICATIONS:

Financial Implications:

- 5.1 The cost of producing the revised Developer Contributions Temporary Recession Relief Measures has been met from within existing revenue budgets. Developer financial contributions (through Section 106 obligations) are commonly used to 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.

Finance Officer Consulted: Name: Karen Brookshaw Date: 18/11/11

Legal Implications:

- 5.2 As noted in paragraph 3.2 of this report developer contributions are secured under planning obligations agreed or offered under s106 of the Town and Country Planning Act 1990. Any obligation must meet the statutory tests set out in Regulation 122 of the Community Infrastructure Regulations 2010. The viability of a proposed development is capable of being a material planning consideration and is therefore something that the local planning authority is able to take into account in considering the amount and nature of s106 obligations sought.

Lawyer Consulted: Name: Hilary Woodward Date: 21/11/11

Equalities Implications:

- 5.3 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:

- 5.4 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 improvements are secured to the wider infrastructure to help provide long-term sustainable development for the city.

Crime & Disorder Implications:

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

Risk and Opportunity Management Implications:

- 5.6 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.

Public Health Implications:

- 5.7 Developer Contributions may be secured towards retention or provision of new health facilities for the City and address inequalities that can impact upon health.

Corporate / Citywide Implications:

- 5.8 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's priorities to improve housing and affordability, promote sustainable transport and improve health and well being in the city.

6. EVALUATION OF ANY ALTERNATIVE OPTION(S):

- 6.1 An alternative option is to secure the full range of developer contributions from all developments in accordance with existing and emerging policy changes. Developers sometimes already experience difficulty in meeting the current full range of developer contributions and in certain circumstances additional pressures of contributions may discourage development or may possibly render it financially unviable. To enable appropriate development to proceed the issue of s106 requirements may be addressed through temporary recession relief measures.
- 6.2 An option is to rely on existing adopted Local Plan policies. The Council currently secures a range of contributions in this manner. However, Local Plan policies are not sufficiently worded to justify 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 required.

7. REASONS FOR REPORT RECOMMENDATIONS

- 7.1 The recommendation takes into account current priority areas for seeking developer contributions and the need for updated advice.
- 7.2 The Technical Guidance has been updated and provides advice for Council officers and others in negotiating developer contributions.

SUPPORTING DOCUMENTATION

Appendices:

1. Developer Contributions – Revised Technical Guidance

Documents in Members' Rooms

None

Background Documents

None