

ECONOMIC DEVELOPMENT & CULTURE COMMITTEE

Agenda Item 61

Brighton & Hove City Council

Subject:	Developer Contributions Temporary Recessions Measures
Date of Meeting:	10th January 2013
Report of:	Strategic Director, Place
Contact Officer: Name:	Debra May
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Ward(s) affected:	All

FOR GENERAL RELEASE/ EXEMPTIONS

1. SUMMARY AND POLICY CONTEXT:

- 1.1 In recognition of the need to enable appropriate development during the current economic climate the Council introduced in early 2010 a range of temporary 'recession' measures that prioritised and allowed for reductions in certain types of s106 developer contributions. This report provides an opportunity to renew measures for S.106 contributions and extend this process in consideration of the ongoing economic situation.

2. RECOMMENDATIONS:

- 2.1 That the committee approves extending the (revised) Developer Contributions Temporary Recessions Relief Measures until 2014.

3 RELEVANT BACKGROUND INFORMATION/CHRONOLOGY OF KEY EVENTS:

- 3.1 To meet planning policy requirements to enable the granting of planning permission for development it may be necessary for developers to mitigate potential negative impacts by providing or upgrading infrastructure. These are secured through s106 Planning Obligations, commonly known as developer contributions.
- 3.2 In certain circumstances s106 planning obligation requirements may impact on the viability of a development either by the cumulative requirements or if there are abnormal site costs. The Council has been responsive to the need for understanding and flexibility in the short term to reflect current market conditions and will negotiate with developers in such situations.

- 3.3 Relief measures for planning obligations were introduced in April 2010 and were renewed in February 2011 and February 2012 to allow for a flexible approach in recognition of the economic climate. When assessing the necessary contributions, further detail on thresholds and methodology is identified in the Developer Contributions Technical Guidance as approved by Cabinet on 17th February 2011.
- 3.4 These temporary measures provide flexibility without compromising on provision towards necessary infrastructure provision in order to enable development to be acceptable and proceed. This approach is consistent with the Homes & Communities Agency (HCA) good practice guidance for delivery of both affordable housing and the infrastructure needed to support communities. These measures have been updated to reflect current priorities for developer contributions.
- 3.5 Since the measures were introduced there has been overall a 22% increase in commencement of development on sites where the Council has permitted later payment or provision of s106 contributions to be paid on Occupation of development. This particular recession measure has benefited delivery of much needed affordable housing on sites at Pankhurst Avenue, ex Nurses accommodation; Upper Hollingdean Road ex Esso site and ex Caffyns site Kingsway Hove.
- 3.6 Where the Council considers that viability of development is affected the priorities when seeking developer contributions will be:

Sustainable Buildings

Requirements for appropriate sustainable development 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 5th June 2008 and pertinent Planning Inspectorate decisions. The requirement for introducing additional financial contributions as identified in this SPD for off site carbon off-set measures will remain suspended until adoption of the City Plan in 2014.

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 for such exceptional circumstances towards off site provision is included in the Developer Contributions Technical Guidance.

Local Employment & Training

Obligations will be sought for major applications only, to support providing a skilled workforce 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 on site employment requirement and financial contributions to support the programme will be calculated in accordance with approved methodology detailed in the Developer Contributions Technical Guidance.

Sustainable Transport

The development threshold on which sustainable transport contributions are sought will remain as a net gain of 5 residential units and above and non-residential schemes with a floor space greater than 500 sqm. The Developer Contributions Technical Guidance clarifies how payments towards mitigating the impact of increased travel are calculated. 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. This approach will be further reviewed in February 2014.

Sport, Recreation & Play Space

The Developer Contributions Technical Guidance includes a breakdown and further detail of the approved standards for open space provision together with a methodology for assessing contributions in accordance with the agreed Open Space, Sports and Recreation Study. Contributions will be spent towards upgrading parks and other amenity space for sports, play provision or other community facilities with health, leisure and social benefits.

Education

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. The Developer Contribution Technical Guidance provides clarification and the methodology for calculating contributions for local schools.

Nature Conservation & Development

Securing requirements towards on site nature conservation and biodiversity measures in accordance with adopted SPD 011 will continue. The requirement for introducing additional financial contributions as identified in Annex 6 (Calculating Developer Contributions) of this document will not be applied and will remain suspended until adoption of the City Plan in 2014.

3.7 Other Relief Measures

Where a scheme is acceptable and a s106 is considered to be necessary to mitigate impact the following will apply:

Pre-application planning advice

The Council will continue to offer a free pre-application advice service for minor schemes. For major schemes the Council will consider a flat fee charge to assist with resourcing and to improve the service to developers.

Waiving of 'indexation' on financial contribution

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

Deferral of contributions

Payment of contributions or provision of infrastructure on date of commencement of the development may be deferred to a later date, for example on first occupation of the development. Phased payment of contributions may also be permitted for major development schemes. The full payment of contributions on ‘commencement of development’, was previously commonly sought.

3.8 All 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, which sets out the thresholds and how payments are calculated and what those contributions will provide. Only where the viability of development may be affected then contributions should be sought in the priority areas as identified by the Temporary Recession Relief Measures.

3.9 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 outcomes of negotiations are clearly understood by all parties before agreeing to enter into and finalising a legal agreement to provide planning obligations. 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.

3.10 Review of current approach to temporary recession measures

It is intended for the recession relief measures to be reviewed annually. The next review will be in February 2014.

4. COMMUNITY ENGAGEMENT AND CONSULTATION

4.1 The temporary s106 Recession Measures were introduced to address concerns of developers and the business community. These agencies support this ongoing approach. Further internal consultation has been undertaken and comments are included in this report.

5. FINANCIAL & OTHER IMPLICATIONS:

Financial Implications:

5.1 Any costs associated with producing the extension to the Developer Contributions Temporary Recession Relief Measures have been met from within existing Planning 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: 05/12/12

Legal Implications:

- 5.2 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 proposal 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 Alison Gatherer Date: 04/12/12

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 measures 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 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. To enable appropriate development to proceed the issue of s106 priorities may be addressed by regular review and extending the temporary recession relief measures.

7. REASONS FOR REPORT RECOMMENDATIONS

- 7.1 The recommendation takes into account current practice for priority areas for seeking s106 developer contributions that needs to be reviewed annually.

SUPPORTING DOCUMENTATION

Appendices:

1. None.

Documents in Members' Rooms

1. None

Background Documents

1. Developer Contributions Technical Guidance