

<b>Subject:</b>	<b>Review of s106 Developer Contributions Temporary Recession Measures</b>		
<b>Date of Meeting:</b>	<b>23<sup>rd</sup> January 2014</b>		
<b>Report of:</b>	<b>Executive Director, Environment Development &amp; Housing</b>		
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<b>Ward(s) affected:</b>	<b>All</b>		

**FOR GENERAL RELEASE/ EXEMPTIONS**

**1. SUMMARY AND POLICY CONTEXT:**

This report provides an update on the current practice of prioritised and reduced s106 developer contributions temporary 'recession' measures first introduced in 2010 to be reflective of the economic situation. This is the 4<sup>th</sup> annual review and is an opportunity to renew these temporary measures and further extend this process in consideration of the ongoing economic situation and delivery of new development particularly housing.

**2. RECOMMENDATIONS:**

- 2.1 That the committee notes the update and extends the (revised) Developer Contributions Temporary Recession Relief Measures until 2015.

**3. RELEVANT BACKGROUND INFORMATION/CHRONOLOGY OF KEY EVENTS:**

Policy Context

- 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 requirements are secured through s106 Planning Obligations, commonly known as developer contributions. The contributions secured help ensure that developers mitigate site specific impacts or contribute towards the necessary infrastructure needs that the development creates.

- 3.2 It is important that S106 planning obligations continue to facilitate necessary infrastructure but do not impede development and economic activity. 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 flexibility in respect of developer contributions to reflect the ongoing market conditions and will negotiate with developers in such situations.

#### Current Practice

- 3.3 Temporary relief measures for planning obligations were introduced in April 2010, and approved by Cabinet 17<sup>th</sup> February 2011. These allow for a flexible approach in recognition of the economic climate by allowing a range of temporary 'recession' measures in certain types of s106 developer contributions. These measures were renewed in 2012 and 2013 and the practice continues in recognition of the need to enable appropriate development during the ongoing economic climate.
- 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 National Planning Policy Framework (NPPF) requiring planning to deliver provision of viable infrastructure necessary to support sustainable development.
- 3.5 Recession relief measures and priorities  
The requirements have been updated to reflect current priorities for developer contributions and the measures below may be applied if development will only become viable if the s106 contribution is reduced. In such circumstances where the Council considers that viability of development is affected, the priorities when seeking developer contributions will be:

#### **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 possible the requirement to secure Car Free Housing in accordance with policy H07, financial contributions for amendments to Traffic Regulation Orders (TRO's) will not be 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 January 2015.

### **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 Contributions Technical Guidance provides clarification and the methodology for calculating contributions for local schools.

### **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 the next annual review and following adoption of the City Plan.

### **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 the next annual review and following adoption of the City Plan.

## **3.6 Other Relief Measures**

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

### **Deferral of contributions**

Payment of contributions or provision of infrastructure may be deferred to a later date so they are due on first occupation of the development.

Staged payment of contributions may also be permitted for major phased development schemes. The full payment of contributions on 'commencement of development', was previously commonly sought.

### Waiving of 'indexation' on financial contributions

A RPI (Retail Prices Index) indexation clause is usually applied to allow for inflation adjustments to contributions from the date the s106 is signed to actual date of payment. This clause may be omitted from s.106 agreements.

### Pre-application planning advice

The Local Planning Authority does not currently charge for any of its pre planning application advice service. There is a full service review currently underway. As a consequence we will consider whether it is appropriate to levy a charge for pre application advice other than that for householders.

### 3.7 Further guidance

When assessing the necessary contributions to assist developers calculate s106 costs, further detailed guidance on thresholds and methodology on the usual types of infrastructure investment that will be required from new development are identified in the Developer Contributions Technical Guidance as approved by Cabinet on 17<sup>th</sup> February 2011. This document sets out the methodology, thresholds and calculations and further details how contributions will be spent.

### 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 current adopted development plan and further detailed advice in the Developer Contributions Technical Guidance.

### 3.9 Development viability

Planning obligations are a necessary cost of development and it is expected that the likely cost of developer contributions will be factored into the development cost at an early stage. However in specific instances planning obligations may be a factor that affects development viability and it is recognised that there may be circumstances where development cannot meet all s106 requirements.

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.

To substantiate a claim the Council may require a full financial appraisal through an informed and independent assessment of viability of the proposal signed by an appropriately qualified and independent valuer/financial professional. An independent assessment cannot provide binding arbitration, but the council will take into account its recommendations when considering applications where viability issues are identified. In all cases, the onus of proving the non-viability of a development proposal is on the developer to provide robust evidence.

### 3.10 Review of current approach to temporary recession measures

These measures will be reviewed annually and annulled if the economic situation improves significantly. The next review will be in January 2015.

## **4. COMMUNITY ENGAGEMENT AND CONSULTATION**

- 4.1 The temporary s106 Recession Measures were introduced in response to address concerns of developers and the business community. These bodies acknowledge the council being reflective of the ongoing economic recession and remain supportive to this approach. Further internal consultation has been undertaken and comments are included in this report.

## **5. FINANCIAL & OTHER IMPLICATIONS:**

### Financial Implications:

- 5.1 Developer financial contributions (through Section 106 obligations) are commonly used to secure infrastructure and services created by the demand from new development including highways infrastructure, transport improvement and travel initiatives, education, health, community or recreation facilities. The implementation of temporary recession relief measures and priorities reduces the potential contributions from developers, however are considered to be appropriate in the current market conditions to facilitate economic growth in the city.

Costs associated with producing this report have been met from within existing Planning revenue budgets.

*Finance Officer Consulted: Steven Bedford Date: 19/11/13*

### Legal Implications:

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.

- 5.2 *Lawyer Consulted: Alison Gatherer Date: 29/11/13*

### 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, education provision and accessibility to city wide 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 Planning obligations may restrict the use of land and 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. Further investigation for progressing a Community Infrastructure Levy (CIL) is currently underway and will be subject to a forthcoming report.

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. The continuation of the recession measures will continue to enable the provision of necessary development 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 during the current economic climate 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. Brighton & Local Plan 2005
2. Developer Contributions Technical Guidance – 17<sup>th</sup> February 2011
3. Brighton & Hove submission City Plan Part One