

<b>Subject:</b>	<b>Section 106 Developer Contributions Technical Guidance - Update</b>		
<b>Date of Meeting:</b>	<b>9<sup>th</sup> March 2017</b>		
<b>Report of:</b>	<b>Executive Director – Economy, Environment &amp; Culture</b>		
<b>Contact Officer:</b>	<b>Name:</b>	<b>Debra May, Principal Planning Officer (s106)</b>	<b>Tel: 292295</b>
	<b>Email:</b>	<b>Debra.may@brighton-hove.gov.uk</b>	
<b>Ward(s) affected:</b>	<b>All</b>		

**FOR GENERAL RELEASE**

**1. PURPOSE OF REPORT AND POLICY CONTEXT**

- 1.1 This report further updates the Developer Contributions Technical Guidance that sets out how and when Section 106 developer contributions are sought on new development proposals.
- 1.2 The Technical Guidance approved by EDC Committee on 16 June 2016 (first approved by Cabinet 17 February 2011) now requires further update to provide wider clarification and advice in respect of contributions sought for Affordable Housing and Local Employment.

**2. RECOMMENDATIONS:**

- 2.1 That the Committee approves the updated Developer Contributions Technical Guidance attached as Appendix 1.
- 2.2 That the Committee authorises officers to annually update the figures within the Affordable Housing Schedule of Commuted Sums Payments in accordance with advice received from the District Valuer and allow this Schedule to be included as a separate Appendix in the updated Developer Contributions Technical Guidance and viewed via a webpage link within the main document.

**3. CONTEXT/ BACKGROUND INFORMATION**

- 3.1 To meet planning policy objectives enabling granting of planning permission it may be necessary for developers to contribute towards necessary infrastructure to support new development. These requirements are commonly known as developer contributions and are secured through the planning process as Planning Obligations under Section 106 of Town and Country Planning Act 1990.
- 3.2 A Planning Obligation may only constitute a reason for granting planning permission for development if the obligation is:
  - Necessary to make the development acceptable in planning terms

- Directly related to the development
- Fairly and reasonably related in scale and kind to the development

3.3 Developer Contributions are sought in accordance with planning policy objectives as set out in the adopted City Plan Part One and the remaining retained policies in the Brighton & Hove Local Plan 2005 and where the requirements set out in 3.2 above are met.

3.4 The revised Developer Contributions Technical Guidance document, attached as Appendix 1, provides detailed advice on the type and scale of contributions that may be sought and is now proposed to be further updated, as described in the following paragraphs, to provide wider advice and clarification in respect of Affordable Housing and Local Employment and Training.

### **3.5 Developer Contributions changes and updates in the revised Guidance Affordable Housing**

The Developer Contributions Technical Guidance (DCTG) has been updated to include guidance on specific circumstances where off-site Affordable Housing commuted sums payments may be secured from larger development sites as an 'exception' to the normal on-site provision policy (CP20 in the City Plan Part One).

The approach for such 'exceptions' guidance (where Affordable Housing commuted sums payment may be secured from larger development sites) was included in the original approved 2011 DCTG. It was omitted from the most recent 2016 update to reflect the need to review the approach and to ensure consistency between guidance in the DCTG and the Affordable Housing Brief

3.6 The Affordable Housing Brief is also being updated, so that the advice within this and the DCTG is now consistent.

3.7 In accordance with Policy CP20 in City Plan Part One on-site provision of affordable housing is the Council's first priority for all suitable larger development sites (40% on sites of 15 units or more, and where practicable, 30% on sites of between 10 and 14 units).

3.8 For larger development sites off-site provision of affordable housing on an alternative site or by way of a financial payment in lieu (commuted sum) will only be acceptable in exceptional circumstances

3.9 There will need to be robust planning or housing reasons to accept offsite provision or a commuted payment on larger development sites. Such justification will need to be carefully made as the presumption will remain for onsite provision unless scheme specific circumstances indicate otherwise. This is a matter for the developer to demonstrate and for the planning authority in conjunction with strategic housing services to consider and agree.

3.10 Circumstances which might justify offsite provision or a payment in lieu could include:

- Where mixed community objectives/housing priorities could be better met in an alternative location. For example where family sized (3 + bedroom, outdoor space) housing cannot easily be provided for on the development site itself, then it may be preferable to seek offsite provision or a commuted sum to fund such affordable housing elsewhere.
- Where there are high housing costs for occupiers associated with the development. For example, in high value areas where development leads to high service/maintenance charges and where this cannot be satisfactorily overcome or avoided by alternative design, massing or separate new build for the affordable housing.
- Where a Registered Provider finds it uneconomic or impractical to provide the affordable units agreed. An example could be where on some sites it is not practical, from a management perspective, to provide and manage a small number of on-site affordable housing units.

3.11 It is important to note that economic viability is not the key test for whether there should be on- or off-site provision. Viability determines the overall amount of affordable housing contribution – i.e. the appropriate percentage overall and the type (tenure, size mix) of affordable housing sought - whether provided onsite, offsite or as a commuted payment.

3.12 Neither off-site provision nor financial contributions will be less a less expensive option than on-site provision, but will be equitable. In such circumstances where the proportion of affordable housing is being negotiated the council may require the developments financial information to be provided on an open book basis which will be required as part of the process

3.13 Where the case is agreed for accepting a payment in lieu of on-site provision, the calculation of the commuted sum will follow the same approach as set out for smaller development sites (5-9 units or sites of between 10 to 14 units).

3.14 Where off-site commuted sums will be spent

The Council will use commuted payments to fund the provision of affordable housing in the City in the following ways:

- To contribute to the costs of building new affordable housing;
- To contribute to the costs of area regeneration in connection with council owned land that would provide new affordable housing;
- To contribute to the costs of purchasing land or properties off-plan for new affordable housing schemes; and
- To contribute to the cost of bringing long term empty homes back into use as affordable housing.

3.15 The principle for securing commuted sums in lieu of on-site Affordable Housing was approved within the 2016 updated DCTG and it was agreed that the Schedule of Commuted Sums Payments within the DCTG should be updated on an annual basis to make sure changes to values can be accounted for. Figures are updated in accordance with advice from the District Valuer. Authority is sought to allow officers to update the Schedule of Commuted Sums Payments on

an annual basis in accordance with the District Valuer's advice and for the Schedule to be viewed as a separate Appendix via a webpage link within the main DCTG.

### **3.16 Local Employment and Training**

Additional wording has been added (pages 13 and 14 of Appendix 1 and shown in underlined italics) to the DCTG to ensure it is clearer that the financial contributions element will also be spent directly supporting on-site construction training and job opportunities facilitated through the council's Local Employment Scheme Co-ordinator.

- 3.17 In accordance with the objectives of the City Plan policies CP2 Sustainable Economic Development, SA6 Sustainable Neighbourhoods and policy CP7 Infrastructure and Developer Contributions, apprenticeships, training and job opportunities for local residents will continue to be sought on major developments secured through provision of adequate community infrastructure.
- 3.18 Developers, through their contractors and sub-contractors are required to provide local employment opportunities to equate to a minimum of 20 % of the workforce. Training provision is also a key element of the benefits to be offered on all major developments during demolition (where practicably possible due to the specific skills required) and construction phases, as further set out in the DCTG.
- 3.19 The scheme co-ordinator supports developers and their contractors through collaboration and providing links as well as brokering relationships with a range of partners and organisations in the city, in order for development meeting their objectives in providing jobs and training opportunities for the local community.
- 3.20 The funding provision for the Local Employment Scheme (LES) Co-ordinator role is supported by the financial contribution element secured through the developers' s106 obligations on all major developments. The LES Co-ordinator's role is pivotal to supporting developers and their contractors with monitoring and compliance as well as liaising across all agencies and partners.
- 3.21 Local Employment Scheme Example  
Through the construction employment training strategy obligation on redevelopment providing 45 Extra Care residential units at Brook Mead Albion Street Brighton the LES Co-ordinator worked closely from the pre-construction period with Willmott Partnerships Homes Construction Manager and Community Liaison Manager. The training and job opportunities secure on site were:
- 5 x Apprentices through sub-contractors (carpentry, brickwork, formwork (for concrete frames), dry lining and electrical
  - 1 x Apprentice through Willmott Partnerships (a Trainee Site Technician now on a Management Training Programme) - and
  - 7 x Construction Traineeship placements started in January 2017
- All achieving the necessary accreditation through Health & Safety qualification (Level 1 H&S in Construction Environment) and a Construction Skills Certification Scheme Card.

#### **4. ANALYSIS & CONSIDERATION OF ANY ALTERNATIVE OPTIONS**

- 4.1 The DCTG provides advice on current planning policies and the only alternative to updating would be for the document being withdrawn as it will be incomplete and out of date. Withdrawal of the Guidance could lead to inconsistent and unclear decisions on developer contributions which could be detrimental to the council, applicants and developers.

#### **5. COMMUNITY ENGAGEMENT & CONSULTATION**

- 5.1 The updated DCTG provides further detail on implementation of policy and priorities in the City Plan Part One adopted March 2016 following the outcome of the Inspector's Examination into the Plan. The City Plan was subject to extensive consultation over a number of years.

#### **6. CONCLUSION**

- 6.1 The recommendation allows the DCTG to be further updated providing additional detailed guidance for consistency and clarity when seeking developer contributions as part of the planning application process.

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

##### Financial Implications:

- 7.1 The costs associated with updating the revised Developer Contributions Technical Guidance have been met from existing revenue budget within the Planning service.

*Finance Officer Consulted: Gemma Jackson*

*Date: 06/02/17*

##### Legal Implications:

- 7.2 As noted in the body of the report, developer contributions are secured by way of planning obligations under s106 of the Town and Country Planning Act 1990 and are sought to assist in mitigating the impact of unacceptable development in order to make development acceptable in planning terms.

To be capable of constituting a reason for granting planning permission any contribution sought must meet the statutory requirements referred to in paragraph 3.2 of this report and found in Regulation 122 of the Community Infrastructure Levy Regulations 2010. Use of the Technical Guidance in assessing developer contributions will assist the Council, as local planning authority, in demonstrating compliance with these statutory requirements.

It is not considered that any adverse human rights implications arise from the report's recommendations.

*Lawyer Consulted:*

*Name Hilary Woodward*

*Date: 9/2/17*

Equalities Implications:

Developer contributions where secured as part of the planning process can provide wide community benefits through for example – affordable housing, local employment opportunities, improved recreation space, pedestrian accessibility and education facilities.

Sustainability Implications:

- 7.2 The objective to securing developer contribution is to mitigate negative impacts of development and to assist enabling new development contributing towards establishing sustainable communities. Continuing to seek developer contributions helps ensure appropriate measures are secured towards physical, environmental and community infrastructure to help ensure long term sustainable development across the city.

Any Other Significant Implications:

- 7.3 None

## **SUPPORTING DOCUMENTATION**

### **Appendices:**

Appendix 1 – revised updated Developer Contributions Technical Guidance

Appendix 1 – Schedule commuted sums payments

### **Documents in Members' Rooms**

None

### **Background Documents**

Brighton & Hove City Plan Part One (Adopted 24 March 2016)

Brighton Hove Local Plan 2005