

REPORT TO THE EXECUTIVE MEETING OF 11 JULY 2016

Meeting:	Executive
Date:	11 July 2016
Subject:	Use of S106 Commuted Sums for Affordable Housing
Report of:	Stephen Pointer
Portfolio Holder:	Councillor Jo Brodrick, Planning
Status:	Decision
Relevant Ward(s):	All

1 Purpose of the Report

- 1.1 This report seeks to update the approach of the Council towards the use of commuted sums paid in lieu of on-site affordable housing provision, and secured through Section 106 Agreements in order to facilitate additional affordable housing in Harborough District.

2 Recommendations:

- 2.1 **That the Practice Note attached as Appendix A to this report in relation to the use of S106 commuted sums to secure affordable housing provision across the District be endorsed.**
- 2.2 **That approval of funding towards projects promoting affordable housing provision be delegated to the Corporate Director (NP) in consultation with the Portfolio Holder for Planning.**

3. Summary of Reasons for the Recommendations:

- 3.1 In certain circumstances the Council accepts a payment by developers in lieu of affordable housing provision on a development site. In 2008 the Executive considered a paper setting out how such sums might be spent and covering the range of projects which might be suitable. Whilst a substantial amount of funding has been allocated since 2008, the Council is still holding a balance of £647,127.69. To date the Council has adopted a reactive approach to spending (responding to proposals made by others). It is considered that a more pro-active approach is needed to ensure that existing and future funds held by the Council for affordable housing is allocated to affordable housing projects in a timely manner. This report therefore seeks the approval of Executive to a new approach as set out in Appendix 1 and also

recommends that approval of funding be delegated to the Corporate Director (NP) (in conjunction with the Portfolio Holder) to ensure that decisions are taken swiftly but within a framework agreed by the Executive.

4. Key Facts

4.1 A Critical Outcome of the Corporate Delivery Plan 2016/7 is “Residents are able to access housing which meets their needs” and Key Activity 02 is to “Achieve delivery of an appropriate mix and type of housing that meets local housing need throughout the District, across all tenures.”

4.2 The District Council’s approach to securing affordable housing in new developments is contained in Core Strategy policy CS3. In most cases provision is made on site but the policy also provides for circumstances where on site provision may be not possible. The HDC Core Strategy November 2011; Policy CS3 (b) says:

“Affordable housing will be provided on-site in most cases. However provision of affordable housing on an alternative site or by way of a commuted sum will be allowed in very exceptional circumstances, or where it can be robustly justified. Exceptional circumstances are where a location and/or scheme are not suitable for on site provision, due to for example site constraints or practical difficulties in servicing/managing affordable dwellings.....

Commuted sums will be based on the equivalent cost of on site provision which will be used to contribute to other local affordable housing provision. Commuted sums collected by the Council will be focused on schemes which offer new provision within the same housing sub-market area as the source development.”

4.3 The National Planning Policy Framework supports affordable housing provision on the site of the obligation; however it enables flexibility to seek financial contributions to progress the housing strategies of the Council in cases where on-site affordable housing provision is not possible. The NPPF at Paragraph 50 says:

“where they have identified affordable housing is required, set policies for meeting this need on site, unless off-site provision or a financial contribution of broadly equivalent value can be robustly justified (for example to improve or make more effective use of the existing housing stock) and the agreed approach contributes to the objective of creating mixed and balanced communities”.

4.4 In addition, experience of applying the Core Strategy policy since 2011 in the District is that social housing providers are sometimes not able to acquire small numbers of affordable units in some rural villages in light of their internal business priorities - and indeed it is often more desirable that affordable housing is provided in larger rural settlements with better access to local services and within easier reach of urban areas. Under such circumstances a commuted sum, calculated according to policy CS3 of the Core Strategy, is appropriate

4.5 The Executive approved a report including a practice note on commuted sums to guide decisions on allocating funding from such sums in June 2008. This indicated that the type of initiatives to be financed through the use of commuted sums would include:

- Development of rented and low cost home ownership;
- Loans/ grants to Registered Social Landlords (RSLs)/ agencies in return for affordable housing nominations;
- Development of supported housing schemes and key worker initiatives;
- Initiatives that support regeneration projects, such as offering loans/ grants to tackle empty homes or poor housing conditions, in return for affordable housing nominations;
- The purchase of land for affordable housing;
- Use of commuted sums as a lever to generate additional resources/ funding from external sources in providing affordable housing.

4.6 Since this time, commuted sums in lieu of on site affordable housing have been used to:

- a) Contribute to development of affordable dwellings in Fleckney;
- b) Contribute to development of a rural affordable housing schemes in Husbands Bosworth, Tilton, North Kilworth and Bitteswell;
- c) Fund the acquisition of Brooklands Gardens by Seven Locks Housing.

A total of £733,590.90 has been paid from funds held for affordable housing towards these since June 2008

4.7 The District Council currently holds a balance of £647,127.69 of funding gained through S106 commuted sums to contribute to development of affordable housing in the District which remains as yet unallocated.

4.8 Since 2008, there has been a somewhat reactive approach to spending commuted sums which has simply responded to proposals made by others. The Council has now begun to take steps to actively develop

land in its ownership for low cost housing and this marks a new step in the Council's role in housing. A review of the Harborough Housing Strategy is taking place in 2016 which is expected to include much stronger reference to housing development. Therefore a more proactive approach is needed to ensure that existing and future funds held by the Council for affordable housing is allocated to affordable housing projects in a timely manner.

4.9 The criteria set out in 2008 are set out in Appendix B. They are now dated and do not reflect current priorities or expectations. Those relating to offering grants or loans to registered social landlords and supporting empty homes or poor housing conditions are no longer a major priority following the improvement programmes to housing stock which social landlords have undertaken since this date. The new approach and suggested criteria are set out in Appendix 1 and seek to:

- a) ensure that available funding is targeted at schemes which deliver additional affordable homes.
- b) make reference to the Council's own programme of housing development and the opportunities this creates to invest in affordable housing development;
- c) enhance and develop relationships with existing providers and developers of affordable housing to help unlock development opportunities, particularly with Seven Locks (Acclaim Housing Group) Waterloo Housing and East Midlands Housing
- d) reflect the emerging Harborough Housing Strategy 2016 and provide a tool to invest in local housing development

4.10 Following approval by Executive as set out in Appendix A, there will be an engagement with relevant housing providers to identify the funding available and positively begin to identify schemes and projects to which the funding could be allocated.

5 Legal Issues

5.1 It is appropriate in general to use the Section 106 commuted sums for the purpose set out in this report (unless the obligation specifies precisely what the sums should be allocated to)

6 Resource Issues

6.1 Resources are available within the funds held from accumulated commuted sums held by the Council for affordable housing. Existing staff resources will administer the funding. There should be no additional resources required beyond this.

7. Equality Implications

- 7.1 There are equality implications arising as additional affordable housing is allocated on a needs basis and this tends to benefit more vulnerable – younger adults and children. Therefore funding for affordable housing projects will have positive impacts on these groups. Equality Assessment of the Council's strategic housing policies, including the processes and procedures involved in the use of commuted sums, is currently being undertaken as part of the review of the Council's Housing Strategy. The reviewed Housing Strategy is to be reported to Executive later in 2016/7.

8 Consultation

- 8.1 Consultations have taken place with the Asset Manager, other Service Managers, the Portfolio Holder for Planning, Head of Planning and Regeneration and the Councils Corporate S106 Group in the preparation of this paper.

9 Options

- 9.1 Option A – not to accept the new Practice Note at all and instead continue to work to the existing 2008 Practice Note.

Option B - not to accept the new Practice Note but invite officers to reconsider the Note and re submit it to a future meeting of the Executive

Option C - Accept the Practice Note as recommended (with any modifications as suggested by the Executive)

The recommendations to this report are suggesting that Option C should be followed. This allows for early approval of the Practice Note with any modification that the Executive wishes to be incorporated.

10 Background Papers

- 10.1 None

Previous report(s):

Report to Executive 30 June 2008
'Use of Commuted Sums to Secure Affordable Housing'

APPENDIX A

UPDATED PRACTICE NOTE (JULY 2016)

- 5.1 Commuted sums that are generated as a result of the Council's affordable housing policy will be used for initiatives that support the delivery or renewal of affordable housing. This will provide for
- Rented Homes (social or affordable rent from a social landlord)
 - Affordable Home Ownership (eg shared ownership involving a registered social landlord)
- 5.2 An element of any commuted sum may also be used to contribute towards the Council's revenue and associated administration costs in facilitating the above.
- 5.3 Whilst Core Strategy policy CS3 states that the spending of commuted sums should be focussed on the area within which the funds are obtained, where it is not possible to do this and in light of time restrictions on spending, commuted sums will be applied across the District in response to the merit of the scheme which arises, and to assist in meeting the overall housing needs of this District.
- 5.4 The Council wishes to be pro-active in its approach to the use of commuted sums and therefore will regularly publicise the availability of sums to Social Housing Providers, Charitable organisations in the District and housing developers. Council officers responsible for Housing and Asset Management will continually explore opportunities to use funding to develop and invest in schemes to develop affordable housing. In order to proactively promote funding available from the commuted scheme, it is suggested that the commuted sums fund be re-named the Harborough Housing Fund.
- 5.5 Proposals for funding will be developed between Council officers and respective organisations and opportunities will be regularly discussed by officers at Capital Programme Board before being considered by the Corporate Management Team (Directors and Heads of Service).
- 5.6 The Council wishes seek to make the most effective use of commuted sums, taking into account the availability opportunities at the time. The type of initiatives to be financed through the use of commuted sums should meet one or more of the following priorities::
- Schemes which assist in regeneration of Council owned sites to deliver affordable housing in the District.
 - Schemes which assist in redevelopment of sites transferred as part of the transfer of housing stock to Seven Locks Housing.

- Schemes which assist the viability of affordable housing provision within development sites .
- Schemes which contribute towards affordable housing in rural areas where specific needs have been identified.
- Schemes to provide contributions to Registered Providers towards site development of land already owned by the Council or Registered Provider - to bring forward development and/or improve tenure mix and enhance affordability for rental and affordable home ownership options.
- Schemes which help to fund a Registered Provider to acquire properties on the open market or completed new build units for social, affordable, intermediate rent or for affordable home ownership options.

Where any commuted sums are used to assist Registered Providers to acquire or develop homes for rent or affordable home ownership, the Council will expect to receive full nomination rights so that all resulting properties are eligible for bids by homeseekers on the Councils housing register.

5.7 All schemes will be expected to demonstrate:

- Improvement to existing or provision of additional affordable homes;
- Partnership with the public, charitable or private sectors
- Overall benefit to the local community.

The Council is keen to promote affordable home ownership - the generic description for a range of equity sharing tenures, intended to make home ownership more accessible to people whose income and financial circumstances preclude them from outright purchase of housing on the open market. Potential projects should always demonstrate delivery of affordable home ownership.

5.8 The Council itself has begun a programme of low cost housing development using land in its ownership. Commuted sum funding will be available to help invest in affordable housing development on these sites and also in other partnership schemes with registered social housing providers .

5.9 Decisions to support the funding of schemes will be delegated to the Corporate Director (NP) in consultation with the Portfolio Holders for Finance/Commercialisation and Planning. Payments will be made from the commuted sums account, as approved, subject to the agreement with the specific partner involved in the scheme.

Starter Homes

- 5.10 The Housing & Planning Act 2016 introduces the concept of Starter Homes and defines these as new dwellings only available for purchase by qualifying first-time buyers and which are made available at price which is at least 20% less than market value but which is below the price cap (£250,000 outside Greater London).
- 5.11 Once necessary enabling regulations come into force, it is expected that the Act will require 20% of new properties on development sites involving 10 or more dwellings to be sold as Starter Homes. The Housing and Planning Act 2016 allows for off-site commuted sums to be made in lieu of on-site starter home provision. Such commuted sums must be used by the local planning authority for providing starter homes elsewhere in their administrative area In line with existing practice, this sum should be based on the cost to the developer of meeting the starter homes requirement.
- 5.12 Starter Homes commuted sums will be spent on schemes involving starter homes and used to increase the number of Starter Home dwellings provided.

APPENDIX B

PRACTICE NOTE (JUNE 2008)

Extract from Report to Executive June 30 2008

Practice Note – off-site affordable housing provision

Off-site affordable housing provision in development schemes

- 5.1 The Housing Strategy Manager will provide advice on the delivery of affordable homes through the planning process when consulted by planning Officers in assessing applications. Supported by the Policy Manager Built Environment Services, the Housing Strategy Manager will advise on the provision of affordable housing in eligible applications, whether off site provision is appropriate and whether a commuted sum should be accepted.
- 5.2 On-site provision is always the favoured option, and applicants will need to provide evidenced based reasons why on-site provision is not appropriate. Such reasons may include:
- Where the proposal involves conversion or redevelopment of existing buildings, such as barn conversions listed buildings, development proposed in conservation areas. These are often expensive to create, resulting in dwellings that do not comply with Housing Corporation Scheme Design Standards, and are expensive to repair and maintain. As such, they will not attract grant funding and are unlikely to be self-financing and therefore potentially unacceptable to any of the Council's preferred Registered Social Landlord (RSL) partners;
 - Where insurmountable problems with funding mean that an RSL or developer is unable to commit to the scheme. The absence of grant funding would not in itself be considered an insurmountable funding problem, and neither would the absence of an RSL willing/ able to take on the scheme as both non-grant funded options and direct provision by the developer would need to be fully explored. The Council would in any case expect adequate evidence to be submitted that any given scheme was financially unviable before consideration could be given to acceptance of a commuted sum in lieu of on-site provision of any affordable housing obligation;
 - Where the off-site provision offered has a larger capacity for affordable housing than would be gained from on-site provision;
 - Where housing need priorities could be better met in an alternative location;

- Where there is a dominance of a particular type of affordable housing provision in the immediate area;
 - Where the integrity or viability of the particular form of development might be compromised by the integration of affordable housing for reasons that can be clearly set out and justified;
- 5.3 When the case for no on-site provision is agreed, the provision of an alternative serviced site, within the District, capable of providing at least the same number of affordable units as the subject site should be considered. Financial contributions may be sought in addition to land where the land is of insufficient area to provide the equivalent on site provision.
- 5.4 The Council may consider the acceptance of suitable completed units elsewhere. Provision of completed units on an alternative site will be in addition to any applicable affordable housing requirement arising from the alternative site. The completed units will also be subject to the principles, design and specification requirements set in the Housing Corporation Scheme Development Standards.
- 5.5 Only once the above options have been fully explored will the Council accept a commuted sum.

Calculation of a Commuted Sum where appropriate

- 5.5 Harborough District Council and its RSL partners do not have extensive land holdings on which to accommodate the use of Commuted Sums. The cash in-lieu approach therefore has to reflect the cost of buying plots elsewhere, on the open market. It is also recognised that off-site contribution alone may be insufficient to secure an equivalent level of provision without any further public subsidy.
- 5.6 The commuted sum will be based on the calculation and example already stipulated in Harborough's SPD (See section 12 page 19), but will also take into account the financial viability of the overall development subject to receipt of development cost information by the applicant on an 'open book' basis for assessment (where appropriate the Council may require independent professional advice from a suitable qualified Surveyor/ Valuer to be funded by the applicant).
- 5.7 Proposals for older person's homes which have special design or management issues often have higher built or operational costs and the financial viability of affordable provision is an issue. Older person developments can be considered affordable if they fulfil the forms of affordable tenure, and are managed by an RSL.
- 5.8 Harborough District Council will expect contributions to affordable housing from schemes for the elderly for sale i.e. private schemes that are not RSL led or RSL associated, and where such schemes cannot

fulfil the above mentioned tenure criteria or meet local housing priorities.

Allocation of commuted sums to enable affordable housing

- 5.9 Commuted sums that are generated as a result of the Council's affordable housing policy will be used for initiatives that support the delivery of affordable housing. The use of any commuted sum will normally be referenced within the Section 106 Agreement within which it is provided.
- 5.10 An element of each commuted sum may also be used to contribute towards the Council's revenue and associated administration costs in facilitating either the above and/ or developing a more strategic approach to affordable housing policy and investment across the District.
- 5.11 Commuted Sums will be applied by Harborough District Council to meet local housing need in accordance with the housing need priorities at the time and in line with the priorities set out in the Council's Housing Strategy and Affordable housing SPD.
- 5.12 It has been very difficult in Harborough to spend the sums within the same local area as they were generated. There are, in most instances, no feasible suitable sites available within the locality. This is an important point given that commuted sums are time restrictive in which they must be spent before developers can demand payments back.
- 5.13 The effective use of commuted sums must therefore be applied District wide to warrant merit, and where affordable housing development opportunity arises, and the affordable housing provided on this alternative site would be of greater or equal benefit in meeting the wider housing needs of this District.
- 5.14 RSL Partners and Agencies can apply for funds, and will be required to justify their claim for funding via a standard application form.
- 5.15 Examples of the type of initiatives that to be financed through the use of commuted sums will include:
- Development of rented and low cost home ownership;
 - Loans/ grants to RSLs/ agencies in return for affordable housing nominations;
 - Development of supported housing schemes and key worker initiatives;

- Initiatives that support regeneration projects, such as offering loans/ grants to tackle empty homes or poor housing conditions, in return for affordable housing nominations;
- The purchase of land for affordable housing;
- Use of commuted sums as a lever to generate additional resources/ funding from external sources in providing affordable housing.

5.16 Applications will be assessed on the basis of schemes demonstrating:

- an overall strategy to improve affordable homes;
- ability to attract additional funding;
- overall benefit of the local community.

5.17 Decisions on applications are to be delegated to the Head of Built Environment Services, with agreement of the Portfolio Holder (Development and Future Opportunities), and also with knowledge and approval of a suitable Panel of Members. At the time of writing it is proposed that the LDF Task Panel, which considers strategic housing issues, would be a suitable group of Members to involve and consult.

5.18 Where any recommendations require formal approval of the Council as landowner, Officers will consider matters in liaison with the Council's Land and Asset Management Group as appropriate.

