

## BABERGH DISTRICT COUNCIL

<b>TO:</b> Cabinet	<b>REPORT NUMBER:</b> BCa/23/6
<b>FROM:</b> Cabinet Member for Housing	<b>DATE OF MEETING:</b> 10 June 2023
<b>OFFICER:</b> Deborah Fenton, Director for Housing	<b>KEY DECISION REF NO.</b> CAB422

### Affordable Housing Commuted Sums Spending Policy

#### 1. PURPOSE OF REPORT

- 1.1 To delegate authority to the Director for Housing, in consultation with the Cabinet Member for Housing, in respect of decision making on the spending of Commuted Sums identified for the delivery of affordable housing.
- 1.2 To provide clarity on how the Director should make decisions on spending commuted sums by adopting a policy framework for decision making.

#### 2. OPTIONS CONSIDERED

- 2.1 The following options were considered;
  - (i) Do nothing. This is not recommended as there is currently no up to date framework for making decisions on spending Commuted Sums.
  - (ii) Confirm the delegation of authority to the Director for Housing to make decisions. This is the recommended approach as it allows for responsive decision making in line with the principles of the constitution. A policy is required in order that officers can make decisions in line with the priorities of the Council, with the Cabinet Member for Housing to be consulted as part of the decision-making process. This approach also provides external bodies with a steer as to what the Council would expect them to achieve in order to access funds, giving them clarity.
  - (iii) Refer decisions related to community-led housing to Cabinet. This is not recommended as the preparatory processes associated with decision making by Cabinet take longer and increase uncertainty for community groups.
  - (iv) The appended policy has been discussed with Cabinet Members and amended in order to strengthen the approach to environmental standards, making exceedance of minimums an eligibility requirement for grant funding. Requiring higher environmental standards in all schemes could reduce the number of affordable homes delivered, or the change the tenure of the homes delivered. Requiring higher environmental performance will also reduce the operating costs for the eventual residents.

#### 3. RECOMMENDATIONS

- 3.1 To confirm that affordable housing Commuted Sums form part of the operational housing budget and so delegate to the Director for Housing the authority to make

the associated spending decisions, in line with adopted policy and in consultation with the Cabinet Member for Housing.

3.2 To adopt the appended Commuted Sums Spending Policy as a means of guiding decision making on Commuted Sums spend.

3.3 That the Director for Housing to be authorised to make future amendments to the Commuted Sums Spending Policy, in consultation with the Cabinet Member for Housing, for example if required to stay up to date with legislation, national or other Council policies.

#### **REASON FOR DECISION**

To enable spending decisions to be made in a consistent, prompt and effective manner, in line with Council policy and objectives, and the terms of the spend set through individual Section 106 planning obligations.

## **4. KEY INFORMATION**

### *Background*

4.1 Affordable housing secured via the planning system is usually delivered as an integral part of open-market development, with the developer being required to build affordable housing and transfer it to either the Council or a Registered Provider (Housing Association). This approach is always the Council's preference as it helps deliver mixed communities and delivers a significant amount of affordable housing with limited resource required by the Council.

4.2 On some occasions; where an open-market development cannot viably afford to provide a full amount of affordable housing or if the circumstances of a scheme are such that it cannot be delivered on site; a payment can be made to the Council in lieu of provision on site. Such payments are secured via Section 106 planning obligations and are known colloquially as 'Commuted Sums'.

4.3 This report concerns the processes for spending Commuted Sums, but a brief description of the collection of Commuted Sums is first provided below.

4.4 The money collected is based on the opportunity cost to the developer of providing affordable housing as opposed to an equivalent amount of open market housing; i.e. there should be no financial benefit or disbenefit to the developer of making a Commuted Sums payment instead of building affordable homes. Because the amount a developer will be required to pay is based on the difference in value between an open market and affordable unit, the money collected will not deliver an equivalent number of affordable units.

4.5 The number and value of Commuted Sums collected varies significantly from year to year, according to the nature of the developments which come forward and the rate at which individual developments meet agreed trigger points for payment. As such the money 'on hand', which the Council has available to spend, will naturally fluctuate markedly. There will be times when the Council has no funding available to spend.

4.6 The total of the Commuted Sums funding on hand has to be considered as a series of different funding pots, divided up based on the sources of the funding; the

individual legal agreements tied to specific developments, with differing timescales and requirements for spend.

4.7 The individual legal agreements with developers which secure the funding will specify the terms on which the funding is to be spent. The terms vary according to the outcomes of negotiation, but generally Commuted Sums are;

- (i) Required to be either committed or spent within ten years of collection.
- (ii) Required to be spent on affordable housing as defined by national planning policy (the National Planning Policy Framework).
- (iii) Able to be spent anywhere within the administrative area of the District.

4.8 Developers have a right to check whether and how the funds have been spent, and can require that funds are returned to them if they are not spent correctly or in time.

#### *Spending Commuted Sums*

4.9 Within the requirements of the individual agreements, the Council has leeway to use Commuted Sums as it wishes, but it is recommended that the following principles apply:

- (i) That sums are used to deliver additional affordable housing ('additionality').

The first practical effect of this is that Commuted Sums could not be used to buy units secured by Section 106 agreements. This is necessary as Commuted Sums are supposed to replace units which would otherwise have been secured under Section 106. Using the funding on Section 106 units would not represent additional supply and so would not replace those units which the Districts missed out on.

Second, under the same principle, the funds should not be used for refurbishment as this does not represent new supply. Refurbishment should be funded from rental income in order that housing is financially sustainable.

The definition of additionality is also extended to allow for changing the tenure of affordable housing to a more affordable tenure, e.g. from affordable rent to social rent.

- (ii) That spend is prioritised on the basis of housing needs.

The justification for prioritising spend on the basis of housing need is self-evident, but it follows therefore that monies ought to be spent where needs are greatest, rather than necessarily where the money was collected.

4.10 Under these principles, funds could be spent in a number of ways:

- (i) By the Council itself, to add to its own stock of housing through construction or purchase of units over and above planning policy requirements. A significant proportion of funds are likely to be spent this way, given the control that the Council would have to ensure that funds are spent correctly and as it avoids the need for grant funding agreements.

- (ii) By grant funding Registered Providers (Housing Associations), to build or purchase affordable homes in the District, over and above planning policy requirements.
- (iii) By grant funding community-led housing schemes, such as Rural Exception Sites and/or Community Land Trusts, to deliver additional affordable homes. These types of projects have the benefit of delivering homes which are affordable in perpetuity.
- (iv) To deliver specialist types of affordable housing where there is a particular gap in provision, or to change the tenure of affordable housing such that it is more affordable (e.g. social rent rather than affordable rent).

The policy has also been drafted to allow for all of these possibilities.

- 4.11 The Section 106 Legal Agreements often refer to the planning definition of affordable housing, as set out in the National Planning Policy Framework, as the basis for what constitutes affordable housing. For the avoidance of doubt, this can include different forms of housing, including general needs affordable housing, temporary accommodation, housing with care or provision for Gypsies and Travellers, as long as the proposal meets the planning definition of affordable housing. The policy would not prevent spend on any type of housing that meets the planning definition.

#### *The Draft Policy*

- 4.12 The policy has been structured such that requests for Commuted Sums funding will be considered in two ways. First, there are a number of eligibility criteria which the bid must fulfil. These would be used to determine whether or not a scheme is eligible for receiving Commuted Sums.
- 4.13 A second set of criteria, which officers have termed the Scheme Justification Factors, will be used to consider whether a scheme should be funded and the relative priority of a scheme. It will be expected that proposals score positively against these criteria in order to justify funding, but it is recognised that not all schemes can fulfil all criteria.
- 4.14 These justification criteria would also be used to judge one project against another, and the amount that any project should receive. In the rare circumstances when there are competing proposals, the criteria would be used to judge proposals against each other and award funding according to the relative merits.
- 4.15 Spending decisions by officers would still be reported in line with the Council's Constitution, and may still be required to be referred to Cabinet if called in.
- 4.16 Given the fluctuations in the amounts of money available to spend, and the timings of schemes becoming available to spend the available money, decisions will not be taken in a programmed way such as through funding rounds or regular scheduled meetings. Instead proposals will be assessed in a responsive and fluid way, as and when they come forward.
- 4.17 The Council's housing development team is aware of, and has contributed to, the emerging policy. Officers will also promote the policy to Registered Providers and Community Housing Groups (namely Community Land Trusts and Parish Councils developing Rural Exception Sites). A form will be created to help external organisations to make applications.

## 5. LINKS TO CORPORATE PLAN

- 5.1 Delivery of affordable housing supports the Council's objectives in respect of housing, wellbeing, communities and the economy.

## 6. FINANCIAL IMPLICATIONS

- 6.1 Commuted sums monies have to be spent in accordance with the requirements of the relevant Section 106 agreements. As such, there is a total amount of funding on hand, of which different tranches have to be spent before different deadlines.
- 6.2 The table below sets out the funding currently on hand and the more imminent deadlines for spending, as an illustration of the profile of spend deadlines.

Babergh funds on hand and not currently allocated: £3.1m					
Cumulative amount to be spent or committed by:	1 April 2024	1 April 2025	1 April 2026	1 April 2027	1 April 2028
	£0.00	£0.00	£4,639	£138,553	£196,769
Mid Suffolk funds on hand and not currently allocated: £325k					
Cumulative amount to be spent or committed by:	1 April 2024	1 April 2025	1 April 2026	1 April 2027	1 April 2028
	£0.00	£0.00	£0.00	£0.00	£0.00

- 6.5 It will be noted that there are not immediate deadlines to spend or commit funding. This results from Section 106 agreements whereby funding was either received in the relatively recent past, or where the agreements set no deadline.
- 6.6 Members will understand that, whilst there may not be much immediate pressure to spend in order to avoid repayment, the objective should be to spend funds sooner rather than later, in order to realise the benefits of the additional affordable homes.

## 7. LEGAL IMPLICATIONS

- 7.1 The policy in itself does not have any specific legal implications, although the Council will need to have regard to the requirements of individual legal agreements as spending decisions are made, in order to avoid challenge from developers.
- 7.2 The Council will also need to be mindful of general statutory duties placed on the Council, for example the Public Sector Equality Duty under the Equality Act 2010.

## 8. RISK MANAGEMENT

8.1 One overarching risk has been identified, and has been added to the Operational Risk Register for Housing Solutions.

Key Risk Description	Likelihood 1-4	Impact 1-4	Key Mitigation Measures	Risk Register and Reference
Incorrect application of the Affordable Housing Commuted Sums Spending Policy, resulting in funds being returned to developers or challenges to the decision making process.	2	3	Careful monitoring of the pipeline of spend deadlines and project delivery, along with effective communication internally and with partner organisations.	Operational Ref 39

## 9. CONSULTATIONS

9.1 This paper and appended policy has been shared internally with Planning, Communities and Property leads for discussion and input.

## 10. EQUALITY ANALYSIS

10.1 An Equality Impact Assessment (EIA) has been required as the protected grounds are affected. It is appended to this paper. Whilst it is not considered likely that there would be adverse impacts on any of the protected characteristics, this depends on the allocation of the housing. As such, the policy has been drafted to either ensure allocation via the Gateway to Homechoice or if, in exceptional circumstances, a different method is used, an Equality Impact Assessment would be required in order that a grant of funding would further the Council's duties in respect of equality and diversity.

10.2 Planning decisions have regard to equality and human rights considerations.

## 11. ENVIRONMENTAL IMPLICATIONS

11.1 The environmental implications of any proposals supported under this policy will be considered as part of the planning process.

11.2 The policy gives extra weight to proposals which deliver environmental performance over and above minimum requirements.

## 12. APPENDICES

Title	Location
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(a) Draft Babergh and Mid Suffolk Commuted Sums Spending Policy	Attached
(b) Equality Impact Assessment	Attached

### **13. BACKGROUND DOCUMENTS**

13.1 None

### **14. REPORT AUTHORS**

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