

**Report To:** Communities Scrutiny Committee

**Date of Meeting:** 28<sup>th</sup> February 2013

**Lead Member/Officer:** Lead Member for Public Realm

**Joint Report Authors:** Head of Planning & Public Protection & Head of Housing & Community Development

**Title:** Update on allocation of Section 106 Commuted Sums for open space provision and maintenance & progress on the Community Infrastructure Levy

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**1. What is the report about?**

- 1.1 This report explains the background to planning obligations and outlines the current arrangements in Denbighshire for the requirement for Section 106 agreements and the management of the allocation of commuted sums received for open space provision and maintenance. The report also provides an update on progress on the Community Infrastructure Levy.

**2. What is the reason for making this report?**

- 2.1 The purpose of this report is to outline current legislation and guidance relating to planning obligations, together with current practice in Denbighshire and an update of monies received and spent over the last year.

**3. What are the Recommendations?**

That Members consider the update on income received through Section 106 Agreements for open space provision and maintenance, the grant offers and payments which have been made, the latest information with respect to the Community Infrastructure Levy and comment accordingly.

**4. Report details.**

- 4.1 The Council's Unitary Development Plan sets out the open space requirements for all new residential developments of 10 or more dwellings. The Open Space Commuted Sum Scheme started in 2004 following adoption of Supplementary Planning Guidance Note 4 "Open Space Requirements in New Developments", which sets out further guidance on the application of the requirements.
- 4.2 Open space provision can be made in 3 sequentially preferable ways:
1. On site
  2. Off site but close to and accessible to the new development
  3. Via a commuted sum payment to enable the required provision or agreed equivalent to be made within the locality – normally the community/town council area.
- 4.3 On-site provision is clearly the normal and preferred option. The Commuted Sum payments method should be treated more as exceptions than the rule. Where a commuted sum payment is made, these funds are held by the Council and allocated in line with the agreed procedure.

### **Payments into the Scheme**

- 4.4 Payments from developers are made at an agreed point in the development process, following the signing of a Section 106 agreement. Due to the nature of the requirements in relation to planning obligations, the funding is ring fenced by town/community council area, specifically for spending on open space projects. Maintenance payments are calculated to cover a 25 year period. Contributions are calculated based on a standard formula calculating potential occupancy as set out in Supplementary Planning Guidance 4: Recreational Public Open Space. Figures are regularly updated to reflect inflation.

### **Applications for funding**

- 4.5 When funds are received in a town/community council area the local members and town/community councils are informed. Funds can be used to lay out new open space or to enhance existing provision, thereby increasing usage. Valid improvements to existing provision could include improvements to accessibility, upgrading facilities, & providing changing facilities, parking or other services to increase or extend use.

### **Amounts Received and Payments Made.**

- 4.6 The Open Space Commuted Sum Scheme has so far received over £1 million in contributions from developers through Section 106 Agreements as contributions towards provision and maintenance of open space in Denbighshire. So far over £600,000 has been either allocated or spent on providing new open space and improvements to existing open space.

### **Off Site Payments and Grant Offers.**

- 4.7 Appendix 1 sets out an update of the grant offers and payments that have been made from the open space commuted sum scheme from the off site provision and maintenance funds to date. All grant offers made have corresponded to the town/community council area from which the funds were originally generated.

### **Operation of the Scheme**

- 4.8 The scheme generates funding via the granting of planning permission, and as such there is an obligation on the Planning Service of the Council to ensure that the money is discharged in an appropriate manner. For example, to ensure that schemes comply with the approved guidance notes and that the funding is ring fenced by town/community council area and only used for appropriate open space provision or improvements.
- 4.9 Over the last year the administration of the distributions of funds received has been managed by the Community Grants & Rural Development Plan Officer, in the Housing & Community Development Service. The Planning & Public Protection Service will continue to manage the collection and receipt of commuted sums.

### **Denbighshire Local Development Plan**

- 4.10 The Local Development Plan (LDP) sets out the Council's future requirements for contributions towards infrastructure provision and the order of priority which would be applied, as follows:
- Affordable housing
  - Recreation and open space
  - Sustainable transport facilities
  - Regeneration
  - Other measures in line with the Council's current priorities
  - Other issues identified in the LDP or by the local community
- 4.11 The LDP is currently going through Public Examination. Following the Examination the intention is to prepare further detailed guidance on these requirements and progress work on the Community Infrastructure Levy, as a means of funding infrastructure requirements.

### **Community Infrastructure Levy**

- 4.12 The Community Infrastructure Levy (CIL) Regulations came into force in England and Wales in April 2010, with reforms approved in March 2011 and further guidance published in December 2012. This allows for local authorities to introduce a new charging mechanism to fund the costs of new or improved infrastructure needs that arise as a result of new development and to support growth. The CIL is a fixed sum levy per square metre of floorspace which all liable development would have to pay. It is intended to provide infrastructure to support the development of an area rather than to make individual planning applications acceptable in planning terms.
- 4.13 The introduction of the CIL is discretionary and authorities wishing to charge CIL have to produce a charging schedule that sets out the rates to be applied. This must be based on evidence of need for infrastructure and an assessment of economic viability of development. The schedule has to go through a process of consultation and public examination (similar to the process for the LDP) and would sit alongside the LDP. Infrastructure which could be funded by CIL includes: roads and other transport facilities; flood defences; schools and other educational facilities; medical facilities; recreational facilities and open spaces. It currently excludes affordable housing. A "meaningful proportion" of the funds raised in each neighbourhood would be passed on to the town or community council for the area.
- 4.14 Although CIL is an optional charge, the CIL Regulations significantly limit the use of S106 agreements after April 2014 particularly in relation to the ability to 'pool' contributions from different developments to fund infrastructure, including open space/recreation schemes. Authorities must have an adopted LDP in place in order to be able to adopt a CIL. The risk is that post April 2014, the Council will not be able to collect money through a number of different S106 agreements to fund a project, for example a new open space. It is therefore important that work on the CIL is progressed as soon as possible. CIL does have the potential to generate far higher contributions to support infrastructure than S106 agreements have in the past.

## **Future Actions**

- 4.15 The 7 North Wales authorities (Denbighshire, Flintshire, Gwynedd, Wrexham, Conwy, Isle of Anglesey Councils & Snowdonia National Park Authority) are currently jointly looking at how the CIL could be implemented across North Wales and consultants were commissioned to undertake initial research into how a CIL charging schedule could be introduced at a North Wales level. It has been agreed by North Wales Planning Officers Group to create a new temporary post to progress this work and recruitment is currently underway. The post will be hosted by Denbighshire and jointly funded by all 7 authorities. The conclusions from this work will be reported to SLT and Members in due course and the Council will need to decide whether or not to implement the CIL in Denbighshire. There would still be a requirement for planning obligations, albeit more limited (for example to secure open space on site or affordable housing).
- 4.16 Further detailed guidance on planning obligations will be drafted following the LDP Public Examination. This will undergo public consultation and member involvement before adoption as Supplementary Planning Guidance. This could sit alongside the CIL, should the Council decide to proceed with implementation of the levy.
- 5. How does the decision contribute to the Corporate Priorities?**  
The Open Space Commuted Sums Scheme contributes to the Clean & Tidy Streets priority by enabling the provision of additional open space and improvement of existing open space to meet community needs.
- 6. What will it cost and how will it affect other services?**  
There are no direct cost implications associated with the information contained in this report.
- 7. What are the main conclusions of the Equality Impact Assessment (EqIA) undertaken on the decision?**  
Not applicable at this stage. Equality Impact Assessment (EqIA) will inform the future development of Supplementary Planning Guidance & Community Infrastructure Levy.
- 8. What consultations have been carried out with Scrutiny and others?**  
This report has been prepared with assistance from the Community Grants & Rural Development Plan Officer.
- 9. Chief Finance Officer Statement**  
There are no direct cost implications.
- 10. What risks are there and is there anything we can do to reduce them?**  
It is important that the current Scheme is carefully monitored to ensure that commuted sums are collected and that grants paid out are related to the specific development from which they were collected. The Council must be able to provide a direct link between the obligation requested and the proposed development. Failure to do so could result in challenge through the appeals process.

**11. Power to make the Decision**

Not applicable at this stage.

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