

Economy and Growth Committee

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| Date of Meeting: | 15 th November 2022 |
| Report Title: | Section 106 Financial Contributions in lieu of Affordable Housing Policy Update |
| Report of: | Jayne Traverse – Executive Director Place |
| Report Reference No: | EG/22/22-23 |
| Ward(s) Affected: | All Wards |

Purpose of Report

- 1.1. This report provides Members with an update on the Section 106 financial contributions in lieu of affordable housing policy, which was approved by the Economy and Growth Committee in September 2021. It was agreed that the policy would be reviewed on an annual basis, and Committee Members made aware of any proposed changes to be made to the policy.
- 1.2. This report will also provide Members with an update of what actions the Strategic Housing team have taken since the policy was adopted, and the outcome of these actions.
- 1.3. The policy sets out the Council's approach to allocating financial contributions in lieu of affordable housing to appropriate projects, where it has been deemed appropriate during the planning process that a financial contribution can be accepted in lieu of on-site provision. The policy aligns with the Council's values, as below:

Open – Financial contributions can be accessed for suitable projects which bring forward the delivery of affordable housing. The policy ensures that applications and the approach to access funding is robust and transparent, ensuring openness during the application and administering process.

Fair – The policy sets out how applications will be reviewed and assessed, ensuring that fairness and equal opportunity is applied for all applications.

Green – The use of financial contributions to enable the delivery of affordable housing will help to ensure that residents have access to well-designed, safe, and sustainable accommodation, regardless of their location within the borough, as well as contribute to the environmental, social and economic wellbeing of Cheshire East.

2. Executive Summary

- 2.1.** On 16th September 2021, Members of the Economy and Growth Committee received a report, advising them of an update to the Council's approach to administering financial contributions in lieu of affordable housing. The update took into consideration the change from a Cabinet to a Committee system and included reference to the Council's Housing Development Framework which was set up by officers earlier in 2021.
- 2.2.** During the September 2021 Committee meeting, Members resolved that they:
 - 2.2.1** approve the process, outlined in Appendix 1 to the report, for the allocation of financial contributions for the provision of affordable housing.
- 2.3.** Following the policy's approval by Members in September 2021, relevant stakeholders were made aware that the policy had been updated and that the Council was open to applications to access the funds via the new procedure.
- 2.4.** The Strategic Housing Team committed to reviewing the policy and presenting any updates to Members on an annual basis. Following a review of the policy which took place earlier in 2022, some amendments were required to the policy to align it with the most recent Constitution and to consider recent changes relating to Subsidy Control.
- 2.5.** This report sets out the changes made and provides Members with the most recent version of the policy for their reference.

3. Recommendations

- 3.1.** To approve the updated S106 financial contributions in lieu of affordable housing policy (Appendix One)
- 3.2.** To note the changes made and delegate authority to approve any spends of financial contributions in lieu of affordable housing in line with the Cheshire East Council Constitution.

4. Reasons for Recommendations

- 4.1. The allocation of financial contributions in lieu of affordable housing enables activity, development and enhancements to affordable housing schemes across the borough. It provides an opportunity for the Strategic Housing team to direct funding to projects and opportunities that align with the council's Housing Strategy 2018-23, as well as the council's Corporate Plan 2021-25.
- 4.2. The updates made in this most recent version of the document ensure that all allocations of funding through S106 financial contributions are within the latest guidance in relation to Subsidy Control, as well as ensuring decision making for funds is correctly outlined to reflect the Constitution.

5. Other Options Considered

- 5.1. The Strategic Housing team committed to reviewing the approved policy on an annual basis and it was during this review that the council's Legal Services team raised a number of points which needed amending. It was discussed and agreed with Legal Services that these changes were essential to ensure the validity of the policy.

| Option | Impact | Risk |
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| Do nothing | The policy contains outdated information, and the council is open to challenge with regards to its allocation of S106 funding. | S106 financial contributions could be delayed in being allocated to projects, and opportunities missed. In some cases, contributions may need to be returned to developers if they are subject to a time limit. |

6. Background

- 6.1. Cabinet originally approved the Council's financial contribution in lieu of affordable housing policy in July 2014. That policy set out the Council's approach to administering financial contributions in lieu of affordable housing, where this had been agreed during the planning process.
- 6.2. A number of priorities were detailed and a process of administering funding to suitable projects was approved. Subsequent to the policy adoption in 2014, a further updated policy was presented to the Economy and Growth Committee in September 2021, which aligned with the Committee system and renewed our approach, ensuring that funds were allocated in a proactive and timely manner.

- 6.3.** Following a review of the policy in August 2022, a small number of amendments were required to the policy, including:
- Updating the policy to align with recent Subsidy Control advice.
 - Amending the decision maker for projects, in line with the most recent version of the Constitution.
 - Including an additional priority which allows funding from individual contributions to be combined with others, if a project requires this.
- 6.4.** When the revised policy was adopted in September 2021, there was some ambiguity regarding the approach to Subsidy Control, which replaced 'State Aid' following the United Kingdom's exit from the European Union. Since the policy was adopted in September 2021, additional guidance has been provided by Government in April 2022, which details how the rules of Subsidy Control are applied and these have since been reflected in both the policy and the application forms to access the funding.
- 6.5.** Following the most recent Constitution in May 2022, a review of the decision makers to allocate funds took place and these were amended to correctly reflect current practices. For Member's information, the original policy from 2021 permitted decisions on contributions of:
- < £1m to be made by the Chair Committee Member for Economy and Growth, and the Director of Growth and Enterprise.
 - > £1m to be made by the Chair Committee Member for Finance Sub-Committee.
- 6.6.** The above has now been revised to reflect the current Constitution which permits allocation of funding of:
- < £2m to be made by the Director of Growth and Enterprise.
 - > £2m to be made by Cheshire East Council's Finance Sub Committee.
- 6.7.** The 2021 policy provided three priorities in how the Housing team would approach opportunities for allocating funding. These included:
- *Priority 1* - Funding to be allocated to Council-led developments, including those identified and progressing through the Housing Development Framework. This can include purchase of land, the provision of viability gap funding and completing relevant surveys/assessments to bring forward affordable housing.
 - *Priority 2* – review of current planning consents and allocating funding to provide additional affordable housing on-site, and/or increase

discount on properties to make them more affordable for residents, especially in areas of the borough with significant affordability issues.

- *Priority 3* – engagement with all town/parish councils and registered housing providers to advise of the funding and what it could be allocated to, encouraging applications for suitable projects for affordable housing across the borough.

- 6.8.** A further amendment is now included as 'Priority 4' which permits the Council to combine funds from multiple financial contributions on a single project. This will allow more significant funds to be allocated if required and allows smaller financial contributions to be combined with others, increasing their impact and their ability to bring forward affordable housing.
- 6.9.** Members should be reassured that all previous safeguards and financial checks are still applicable during the allocation process and the Council will always seek value for money and appropriate use of this funding when assessing proposals to access these funds for suitable projects.
- 6.10.** Since the adoption of the revised policy in September 2021, the Housing team have been proactive in raising awareness of this opportunity to access funding by engaging with town and parish councils, as well as our registered housing provider partners. Whilst uptake through this method has been minimal, the team will continue to promote the funding and engage proactively with potential applicants.
- 6.11.** Some Section 106 financial contributions are restricted by a geographical location, for example within a certain settlement of the borough, and are required to be spent within certain timeframes, typically either 5 or 10 years.
- 6.12.** One such financial contribution has since been allocated to purchase a property within the north of the borough, which will be utilised by the Council to assist families and households who are experiencing homelessness and require safe accommodation.

7. Consultation and Engagement

- There is not a statutory requirement to have a policy in place, however it is good practice to have a clear, transparent approach for the council to assess and approve any funding provided through financial contributions in lieu of affordable housing. The approved 2021 policy was raised at relevant stakeholder meetings with local housing providers, and communication was sent to all town and parish council's advising that the 2021 policy had been updated and was open for applications.

8. Implications

8.1. Legal

- 8.1.1.** The production of a S106 financial contribution policy is not a statutory requirement but is good practice to provide applicants with a clear, transparent approach to how these funds are allocated.
- 8.1.2.** Any funds to be allocated and used should be in compliance with this policy. Where appropriate S106 monies should be used in line with any specific requirements of the original S106 agreement, in relation to geographical area and time frame in which it is to be spent.
- 8.1.3.** The policy reflects the subsidy control position as it currently stands in law. Given that the Subsidy Control Act 2022 is not yet operative (anticipated to be later this year) this area remains subject to change. Legal advice should be sought once the Act becomes operative to ensure the policy reflects the law in relation to subsidy control at that point.

8.2. Finance

- 8.2.1.** There are no additional financial implications. The use of S106 financial contributions in lieu of affordable housing is already approved. This update to the policy aligns the process with recent legislation regarding Subsidy Control and confirms who decision makers are in line with the Constitution.

8.3. Policy

- 8.3.1.** The policy will contribute towards the vision of the Corporate Plan 2021-2025 to be an open, fair and green Council and help to deliver additional affordable housing within the borough.
- 8.3.2.** The Cheshire East Council Housing Strategy 2018-23 details a requirement to see additional affordable housing provided across the borough. This policy will contribute to achieving that outcome by enabling access to funding which helps to deliver additional affordable homes.

8.4. Equality

- 8.4.1.** An Equality Impact Assessment (EIA) has been updated for the policy.

8.5. Human Resources

- 8.5.1.** There are no Human Resources implications.

8.6. Risk Management

- 8.6.1.** There are no risks associated with the policy, however if this policy is not approved this could impact on future allocations of S106 financial contributions.

8.7. Rural Communities

8.7.1. Funding provided by this policy is available to all areas of the borough, however the Strategic Housing team are keen to enable affordable housing delivery in rural communities. This enables local families and households to remain in rural areas and contributes to supporting the economic sustainability of these communities.

8.8. Children and Young People/Cared for Children

8.8.1. There are no specific impacts in relation to children and young people, however the policy seeks to enable the delivery of safe, secure and sustainable homes for residents to live and to thrive.

8.9. Public Health

8.9.1. There are no specific impacts in relation to Public Health, however the policy seeks to enable funding to deliver additional safe, secure and sustainable homes which can assist in improving health outcomes of residents throughout the borough.

8.9.2. The impact of poor housing conditions can have significant detrimental implications for all those affected, and it is therefore essential that families are able to access suitable housing options regardless of their location or financial circumstances.

8.10. Climate Change

8.10.1. The updated policy seeks to enable funding opportunities which promote the delivery of high-quality affordable housing. New build housing will be subject to relevant building regulations and standards which promote less reliability on fossil fuels and greater levels of energy efficiency and sustainable building methods.

| Access to Information | |
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| Contact Officer: | Karen Carsberg Karen.carsberg@cheshireeast.gov.uk 07710975438 |
| Appendices: | Appendix One – S106 financial contributions in lieu of affordable housing policy |
| Background Papers: | |