

POLICY FOR ALLOCATION OF FINANCIAL CONTRIBUTIONS (COMMUTED SUMS) IN LIEU OF AFFORDABLE HOUSING FUNDING

INDEX

	Page number
1. Introduction and definition of Affordable Housing	1
2. Priorities for allocating funds	2-3
3. Application process and promotion of funds	4-5
4. Approval of and process for spending funds	5
5. Consultation, review, contacts, Subsidy control and Equal Opportunities	5-7
6. Commuted sum process map	8

1. **Introduction:**

The Council, as the Planning Authority makes every effort to ensure that 30% affordable housing is delivered on-site in new housing developments, or off-site if this is not possible. However, in some limited circumstances where neither of these alternatives are possible, a financial contribution in lieu of on-site provision (commuted sum) can be accepted under Section 106 of the Town and Country Planning Act 1990. Such circumstances may include:

- The provision of the affordable housing elsewhere in the locality would provide a better mix of housing types.
- Management of the affordable dwellings on site would not be feasible, due to a lack of registered provider interest.
- It would be more appropriate to bring back existing vacant housing into use as affordable units which may also bring about regeneration benefits.
- There are specific and unusual constraints on the site that prevent the provision of the size and type of affordable housing required in the area.

The Council receives payments from developers, in lieu of the on-site provision having entered into legally binding agreements (S106 agreements) which contain obligations on the Council to use the financial contributions (commuted sums) in accordance with the provisions of each legal agreement, to enhance development opportunities throughout the borough.

This policy relates specifically to the obligations as they relate to affordable housing provision in the S106 agreements, to facilitate the delivery of high-quality affordable housing that meets the needs of the whole community and stimulates the housing market.

The Council is contractually bound by the terms of the S106 agreements and so can only apply the criteria set out in the policy, in so far as it does not conflict with the specific terms found in each S106 agreement, such as restrictions on the geographical area that a financial contribution can be spent.

1.1 **Definition of Affordable Housing:**

The National Planning Policy Framework 2021, Annex 2 (NPPF) defines affordable housing as:

‘housing for sale or rent, for those whose needs are not met by the market (including housing that provides a subsidised route to home ownership and/or is for essential local workers); and which complies with one or more of the following: affordable housing for rent, starter homes, discounted market sale housing and other affordable routes to home ownership’, e.g. shared ownership, shared equity and rent to buy.

First Homes are not addressed in the NPPF or referred to in the definition of affordable housing set out in Annex 2. National planning policy for First Homes is contained in a Written Ministerial Statement made on 24th May 2021. The Ministerial Statement states that a home

meeting the criteria of a First Home will also be considered to meet the definition of affordable housing. This is restated in the national planning guidance on First Homes published alongside the Ministerial Statement.

Please note: Should the NPPF's standard definition of Affordable Housing change then the above definition will be amended accordingly.

2. Priorities for allocating funds:

In some cases, the S106 agreements are prescriptive, e.g., limited by geographical area or ward and funds can only be distributed in accordance with the specific terms and timescales set out in each individual S106 agreement.

In other S106 agreements the terms are not so rigid, and the funds received (commuted sums) will be pooled and allocated for the delivery of affordable housing across the whole of the borough. This allows the Council discretion in deciding how to allocate the funds available, to ensure the creation of mixed tenure affordable housing that meets the needs of communities.

In circumstances where the Council does have discretion to decide how financial contributions (commuted sums) are allocated for affordable housing, we will use them to:

- Purchase land and create new affordable housing schemes, where a need has been established.
- Provide funding to secure more affordable homes on specific developments in addition to those secured under the S106 agreements.
- Reduce funding gaps to help enhance developments, where a scheme will provide additional affordable housing.
- Invest in existing affordable housing stock within Crewe to raise the quality of accommodation (in accordance with Cheshire East Local Plan policy SC5 'affordable homes' – justification 12.51).

In addition, we will prioritise the housing needs of residents highlighted in the Council's Housing Strategy 2018-2023, including the development of:

- The right mix of affordable housing needed by the community.
- Additional temporary accommodation for people who have become homeless.
- Empty properties to bring them back into use.
- Specialist housing, e.g., for families with disabilities or for older people.
- Rural accommodation to enable people to continue to reside within their local communities.

In order to do this, we will apply the following priorities:

2.1 First Priority:

In cases where discretion can be exercised consideration will be given to whether the terms of the legal agreement (S106) will allow the funds to be used to develop Council owned sites or council led developments and property for redevelopment, where appropriate, through the new Housing Development Framework or another appropriate procurement route, to commission the development of mixed tenure affordable housing provision, to meet identified housing needs. This also includes the ability to use funds to purchase land for the development of affordable housing schemes, which will be developed via the Housing Development Framework or another appropriate procurement route. This will need to be achievable in the timescales (if applicable) outlined in the S106 agreement, in the geographical areas intended under each agreement.

2.2 Second Priority:

If no Council led development is possible then all planning applications in the relevant area will be checked to establish whether it would be appropriate for the Council to provide funding to enable more affordable homes to be purchased, with the developers applying for such funding. The council will consider this approach on developments where 30% affordable housing has already been secured under the S106 agreement; on sites where the level of affordable housing provided is below 30%, due to the contributions required from developers for specific local infrastructure projects, such as major road schemes, e.g. Congleton Link Road and Poynton Relief Road, and on developments with less than 15 dwellings (not covered by the S106 agreements) in key areas where a particular need has been identified, e.g. Rural areas etc. to help meet the needs of the local community.

2.3 Third Priority:

If no Council led developments are possible and there are no outstanding planning permissions which would be appropriate for use of the funds then the Council will annually consult with Town and Parish Councils and Registered providers to establish if any specific housing sites have been identified in Neighbourhood Plans or maybe coming onto the market in the near future to enable the Council to bring forward affordable housing in high priority areas, e.g. empty properties, specialist housing and other identified requirements, that have not already been met through the affordable housing provision in previous S106 agreements.

In addition, in certain circumstances, where the criteria of specific S106 agreements are not met by applying the other priorities and commuted sums remain unspent then advertisements will be placed in suitable media to attract applications which do meet the criteria.

2.4 Fourth Priority:

If the funds cannot be allocated after all the preceding steps had been followed any remaining funds should be pooled and allocated to the delivery of affordable housing anywhere in the borough of Cheshire East, provided that the terms of the s106

agreement allows this. In these circumstances funds will be allocated in accordance with the timescales in which they must be used under the terms of each individual agreement.

If the terms of the agreement do not allow pooling, then the funds will be available for use on any new affordable housing schemes that are bought forward within the time scales set out agreement for the provision of affordable housing.

In applying its discretion and the above criteria the Council will do so in deference to the terms of each individual agreement at each stage of the process and in all cases to ensure that the funding is used in the provision of affordable housing.

3. **Application Process:**

To assess the viability of requests for funding, all applicants will be invited to complete a financial contribution (Commuted sum) Application form (Appendix 1). Applications will be received and considered in date order and a record of the submission and nature of the applications kept.

On receipt of a completed Application form and all relevant supporting documentation, the **Strategic Housing team** will undertake a verification process which will include a credit check on the applicant, checking of the documents that show the ownership of the site, planning status documents and project plan.

Once applications have passed the verification process and are being actively considered for funding, the proposal will be assessed by the **Head of Housing** and **Section 151 Officer** to determine whether the proposal is financially viable; that it meets not just the criteria set out in the specific S106 agreement(s), but the key priorities and objectives for affordable housing in the borough, highlighted in section 2 (above), the Housing Strategy 2018-2023 and the procedures governing the allocation of Financial contributions (commuted sums) for the provision of affordable and specialist housing initiatives (Appendix 3) .

If the application is successful, but no financial contribution (commuted sum) funding is available for allocation then it will remain on the list of live funding applications and as funding becomes available for distribution then it will be considered against the terms of the S106 agreement and the Council's criteria.

In the event of there being more than one successful application for funding which meets the criteria specified in the S106 agreement, the following factors will be considered to decide which application should take priority:

- The project offers value for money and meets the identified needs of residents in 'high priority' areas, such as older people, the homeless and people with disabilities.
- It offers family homes to meet the needs of existing families and those moving into the area for work.
- The scheme can start on site within 3 months of being advised that the bid for funding has been successful.

- The applicant can demonstrate that the funding will be spent within the timescales set out in the S106 agreement.

Please note: Where an application doesn't sufficiently meet the housing needs or provide value for money, the Council reserves the right to refuse the application.

The Council must, to fulfil its function as the Planning Authority and its obligations under the individual legal S106 agreements, monitor the use of the financial contributions (commuted sums) and obligations may be imposed on any recipient regarding provision of evidence, as to how the money is used, regardless of when the money is received.

The Council must also account for its use of the money to the developers who paid the financial contribution (commuted sums) and remain in control of the use of and dissipation of the funding.

In the event of a dispute the case will be referred to the **Director of Growth and Enterprise** whose decision shall be final.

4. Approval for allocation of funds

The original Cabinet decision in July 2014 delegated authority to Portfolio Holder and Director level. To bring this policy up to date following the adoption of the Committee system, an officer decision report will be sent to request approval for funds to be allocated to the project as follows.

- Under £2 million – **the Director of Growth and Enterprise.**
- Over £2 million – **Cheshire East Council's Finance Sub Committee.**

If funding is agreed, then an offer letter will be sent to the applicant stating the specific terms of the offer and timescale for use of the funding.

4.1 Process for spending Funds:

Following approval payment will only be made on production of evidence that the specific works have been carried out in line with the original proposal and offer letter, and an invoice from the Developer or Registered Provider is received.

5 Consultation:

The Planning, Legal and Financial departments have all been involved in the development of this procedure.

5.1 Review:

This Procedure will be reviewed annually by Cheshire East officers when agreed. An update report will be provided to the Economy and Growth Committee on an annual basis.

5.2 **Contacts:**

Housing Strategy Team
Cheshire East Council
Westfields
Sandbach
CW11 1HZ

Tel: 01270 685 912

Email: housingpolicycec@cheshireeast.gov.uk

5.3 **Equal Opportunities:**

An Equality Impact Assessment has been carried out in respect of this procedure to ensure we serve the whole borough, tackle inequality, and allocate affordable housing fairly and objectively.

5.4 **Subsidy Control:**

Following the UK exiting the EU, State Aid rules have been replaced by “subsidy control” regulation. When allocating financial contributions, the Council is required to comply with subsidy control provisions that are set out in the Trade and Co-operation Agreement between the EU and the UK (“TCA”); World Trade Organisation rules and certain other international commitments (referred to as “Subsidy Control Materials”). This obligation kicks in whenever a “subsidy” (allocation) is being awarded by the Council to any organisation.

Prior to any allocation award an analysis will need to be made as follows:

- Determine whether the allocation is a subsidy and what Subsidy Control Materials are relevant.
- Evaluate whether the allocation is a prohibited subsidy.
- If in scope of the TCA, assess the allocation against the principles (principles which aim to ensure that subsidies are not allocated where they have, or could have, a material effect on investment or trade).
- Assess the likelihood of triggering a dispute under international obligations and agreements.
- Record the award of the allocation as a subsidy.

Assuming that any proposed allocation is in scope of the TCA; the Council will need on each occasion that an allocation is being considered to evaluate and model the award based on the principles within the TCA. It is therefore important that Legal Services are engaged at an early stage whenever the award of an allocation is being considered.

There are de minimis provisions, but application will depend upon whether in each circumstance other subsidies have been awarded to the organisation. First consideration should be given to the application of the principles to obviate the need to consider de minimis.

Subsidy control is currently in a state of transition. Whereas there is a new Subsidy Control Act 2022 (“the Act”) on the statute books; its operative provision is yet to be brought into

effect; but when they are the Act will form the backbone of the UK's subsidy control regime. The subsidy control aspects of this policy will need to be reviewed and if necessary adjusted when the Act is operative.

Financial contribution Agreement

Distribution of funds

Approval Process

Planning decision results in a financial contribution (commuted sum) in lieu of on-site affordable housing

Priority 1: Council-owned or Council-led developments in the borough through the Housing Development Framework or another appropriate procurement route.

Priority 2: Relevant planning applications checked to determine suitable sites to bring forward for affordable homes.

Priority 3: Liaison with Town and Parish Councils and Registered providers to bring forward affordable housing in high priority areas.

Priority 4: Funds pooled and allocated for delivery of affordable homes in the borough.

****** The only exception to this process is where a financial contribution is prescriptive in where and how it must be spent.

Application form (Appendix 1) and all other supporting documentation received.

Application approved and added to list of live funding applications (in date order of receipt).

If/when a financial contribution is available, suitable application provisionally allocated the funding.

Offer letter sent to applicant stating specific terms and timescales for use of the funds.

Funds paid following provision of evidence (invoice) of completion.

Verification process carried out by Strategic Housing Team, including:

- Credit check on applicant
- Inspection of site ownership
- Proof of planning application status
- Review of Project plan and timescale for development

Key priorities and financial viability assessed by Head of Housing and Section 151 Officer

Approval sought for funds to be spent:

- < £2 million: by the Director of Growth and Enterprise
- > £2 million: via Cheshire East Finance Sub committee