

**POLICY GOVERNING ALLOCATION OF AFFORDABLE HOUSING COMMUTED SUMS TO
SUPPORT HOUSING FOR PEOPLE IN HOUSING NEED IN CHESHIRE EAST**

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2.

Introduction

The Council, as the planning authority, receives payments made by developers, in lieu of on-site provision of affordable housing (commuted sums) under section 106 of the Town and County Planning Act 1990.

The Council enters into legally binding agreements which contain obligations on the Council to use the sums in accordance with the provisions of each particular legal agreement.

A Definition

The definition of affordable housing is different in each agreement. This Policy therefore provides the following definition for use in all future s106 agreements

“Affordable housing is subsidised housing provided at an affordable cost to households whose needs are not met by the market with regard to local incomes and local house prices”.

NB This wording is adopted from the Council’s definition of Affordable Housing as set out in the Council’s standard s106 agreement pro-forma and, should the Council’s standard definition change then the above definition will be amended in accordance with any changes to the Council’s standard.

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 terms of the s106.

B Priorities in respect of allocating funds

In some cases the s106 agreements are prescriptive and funds will be distributed under the terms of the agreement.

In other agreements the terms are not so prescriptive and therefore this policy allows the Council some discretion in deciding how to allocate some of the funds available.

Where the Council does have discretion in deciding how the commuted sum will be allocated it will apply the following priorities:-

First Priority

In cases where discretion can be exercised consideration will be given to whether the terms of the legal agreement allow the funds to be used to help develop a Council owned site or Council led development. This will need to be achievable in the timescales (if any) outlined in the agreement, in the areas intended under the agreement.

3.

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 to apply the funds to help bring these forward. (In these cases precedence will be given to projects which have already submitted an application for funding as set out below).

Third Priority

If there is no Council led development and there are no outstanding planning permissions in the relevant area which would be appropriate for use of the funds then existing applications via the Council's website will be considered.

In certain circumstances, where criteria of s106 agreement are not met from existing applications received, then adverts will be placed in suitable media to attract applications which do meet the criteria within the relevant area.

In the event of there being more than one application for funding which meets the criteria specified in the agreement the following factors should be taken into account in order to decide which application should take priority :-

- Planning permission is in place
- Land is in applicants ownership
- Applicant has passed a credit check
- The scheme can start on site within 3 months of being advised that bid for money has been successful
- Date order

In the event of a dispute the case should be referred to the Head of Investment whose decision shall be final.

Fourth Priority

If the funds cannot be allocated after all the preceding steps have been followed any remaining funds should be pooled and allocated to the delivery of affordable housing anywhere within the borough of Cheshire East provided that the terms of the particular s106 agreement allow 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 brought forward within the timescales set out in the particular agreement for the provision of affordable housing. The Council will continue to consider allocating funds to applications received.

4.

In applying its' discretion and the above criteria the Council will do so in deference to the terms of the 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.

C Application Process

(A link to the Council's website will be included here)

Applications will be invited via an ongoing open invitation on the Council's website and considered against the commuted sums available at the time and the criteria set out in the s106 agreement.

- Applications will be received and considered in date order and a record of the submission and nature of the applications kept.
- If no commuted sum is available for allocation to a particular application then it will remain on the list of live applications and,
- as commuted sums become available for distribution the existing applications will be considered in order of the date of application and the suitability of the application to the terms of the particular s106 agreement and the Council's criteria (where discretion can be exercised).

Applications will not be automatically added to the list but must first pass a verification process which will involve a credit check on the applicant. The applicant will also need to provide information in relation to ownership of the site and planning status. Once applications are being actively considered for funding they will also need to provide a financial breakdown and project plan for the scheme.

In certain circumstances where criteria of s106 agreement are not met from existing applications received, then adverts will be placed in suitable media to attract applications which meet the criteria.

Applications will be considered for any pooled funds and where appropriate applications will also be invited by advert.

The Council must, in order to fulfil its function as Planning Authority and its obligations under the individual legal agreements monitor the use of the funds and obligations may be imposed on any recipient regarding provision of evidence as to how the money is used—regardless of when money is received.

The Council must account for its use of the money to the developers who paid the commuted sums and remain in control of the use of and dissipation of the commuted sums. Therefore, the Council will make payment from the commuted sums on presentation by the recipient of invoices evidencing that works have been done.

5.

D Transitional Arrangements

At the time of writing this policy a small number of applications for these funds have already been received by the Council. The process, in terms of asking for formal applications, outlined in this policy should not therefore apply to these applications. These applications should therefore be subject to the following transitional arrangements:-

Applicants will need to provide the same evidence as required under the application process outlined in this policy. These applications must therefore provide the following information:-

- information on credit checks
- proof of planning permission
- proof of landownership
- financial breakdown and project plan for scheme which confirms a need for the funding

Subject to satisfactory information being provided in respect of this information a report will be taken to the Portfolio Holder for Planning, Economic Development and Regeneration and the Director of Economic Growth and Prosperity.

E Approval for allocation of funds to be released

- Providing request for funding is below £1m approval will be gained by taking a report to the Portfolio Holder for Planning, Economic Development and Regeneration and the Director of Economic Growth and Prosperity.
- Where requests are above £1m a report will be taken to Cabinet

F Process for spending Funds

Payment will only be made on production of an invoice by the Developer or Registered Provider evidencing that works have been carried out.

G Consultation

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

H Review

This Policy will be reviewed at the end of March 2015

6. Contacts

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Equal Opportunities

An Equality Impact Assessment will be carried out in respect of this policy

Commuted Sum Agreement

Process for Distribution of Sum

Start

S106 Agreement yields a commuted sum in place of affordable housing provision.

S106 Agreement is not prescriptive. The Council will determine criteria for distribution via the below priorities and invite applications.

Priority 1: Council-owned or Council-led development in the area.

Priority 2: Bring forward extant developments in the area.

Priority 3: Invite applications for funding for pending planning applications.

Priority 4: Sums pooled and allocated to develop affordable housing elsewhere in the Borough.

S106 Agreement entails prescribed distribution criteria for the commuted sum that must be adhered to in the allocation.

Applications for use of a commuted sum received via Council website.

Application approved and added to live list in date order of receipt.

As commuted sums become available, relevant applications (based on distribution criteria and location) are assessed in date order of submission.

Most suitable development/application allocated the commuted sum

Funds paid following provision of evidence (invoice) of completed works.

Pre-listing check conducted. Applicant must provide:

- Credit check
- Proof of land ownership
- Proof of planning application
- Assurance they can start on site within three months of receiving sum.

Applications being assessed must at this stage provide a full project plan and financial breakdown

**<£1million approved by Portfolio Holder for Housing, Planning, Economic Development, and Regeneration and the Director of Economic Growth and Prosperity
>£1 million approved via Cabinet**

