

Leicester
City Council

WARDS AFFECTED:

ALL WARDS

Economic Development and Planning Scrutiny Committee	21 Sept 2006
Community Safety and Housing Scrutiny Committee	5 Oct 2006
Planning and Development Control Committee	13 Oct 2006
Cabinet	30 Oct 2006

Development Contributions and the Planning Process

Report of the Corporate Director, Regeneration and Culture

1 Purpose of Report

- 1.1 To review the Council's existing arrangements for handling developer contributions and to seek agreement to revised policies and procedures designed to improve the Council's corporate approach in dealing with developer contributions.

2 Summary

- 2.1 The City Council adopted a protocol in 2003 to guide the way in which the Council seeks to secure developer contributions. In 2005 The Strategic Planning and Regeneration Scrutiny Committee asked for a review of how the protocol works and suggested on all Party Member Group to do this. The Housing Scrutiny Committee separately asked for a review of how developer contributions can better help towards the provision of affordable housing.
- 2.2 The all Party Member/Officer Group met six times as a task and finish group. The Group has carried out a review of existing Council policies and procedures and has drawn on best practice from other authorities. It has drawn up a summary of all potential developer contributions that could be sought and set out a series of flow charts which detail the processes involved in dealing with planning applications and how the most appropriate contributions can best be secured. A prioritisation policy has been drawn up and working arrangements in the form of an Officer Group and the creation of a Developer Contributions Officer post have all been discussed and recommended. The importance of good communications and information management has also been addressed.

3 Recommendations

- 3.1 The Economic Development and Planning Scrutiny Committee, the community Safety and Housing Scrutiny Committee and the Planning and Development Control Committee are asked to comment on this report.
- 3.2 Cabinet are asked to approve:
- (i) The summary of developer contributions as set out in the Planning Obligations Summary (see Appendix 2)
 - (ii) The flowcharts which set out the progresses for handling developer contributions (see Appendix 3)
 - (iii) The Developer Contributions Guidance for Officers as set out in Appendix 4

- (iv) The terms of reference for a Developer Contributions Officer Group (see Appendix 5)
- (v) The establishment of a post of Developer Contributions Officer with appropriate support (see Appendix 6)
- (vi) The summary action plan as set out in Appendix 7

4 Financial & Legal Implications

4.1 See supporting information

5 Report Author

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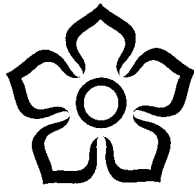
Service Director

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DECISION STATUS

Key Decision	No
Reason	N/A
Appeared in Forward Plan	N/A
Executive or Council Decision	Executive (Cabinet)



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City Council

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**Economic Development and Planning Scrutiny
Committee**
Community Safety and Housing Scrutiny Committee
Planning and Development Control Committee
Cabinet

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Development Contributions and the Planning Process

SUPPORTING INFORMATION

1. Introduction

1.1 The City Council adopted a protocol to guide our handling of developer contributions in October 2003. The Strategic Planning and Regeneration Scrutiny Committee asked for a review of this protocol in November 2005 and proposed that an all Party Member Group be established to oversee this work. The Housing Scrutiny Committee had asked in October 2005 if more could be done through the planning system to deliver affordable housing. The Member Group therefore addressed this issue as well. This report sets out the findings and recommendations that stem from the work of the Member Group.

2. Terms of Reference for the Member Group

2.1 The all Party Member Group comprised the relevant Cabinet Leads, Scrutiny Committee Triumvirates and minority group representation. It met six times as a task and finish Group between December 2005 and June 2006. It was supported by Officers representing planning, regeneration, legal, property, housing, highways, education and open spaces. Specialist advice came from an external consultant hired specifically for this job.

2.2 The Strategic objective of the Group was "to maximise developer contributions and their distribution, tied into the overall priorities of the Council". The overall aims were:

- To review existing Council policies and procedures for dealing with developer contributions.
- To learn from best practice from other authorities and from recent cases within Leicester.
- To prepare revised policies and procedures together with an action plan to deliver improvements
- To respond to the issues raised by the Housing Committee and other Committees as they wish, in respect of affordable housing.

2.3 The topics covered by the Group were:

- The framework and policy context within which developer contributions can be sought
- A summary of possible developer contributions including the creation of flowcharts

- Viability appraisals
- A prioritisation policy for developer contributions
- Legal Services involvement in the process
- Corporate working arrangements and the possible role of a Developer Contributions Officer
- Data establishment and maintenance
- Communications
- An action plan to deliver improvements

2.4 Further details on the terms of reference are contained in Appendix 1.

3. Framework and Policy Context for Developer Contributions

3.1 In considering development proposals in the form of pre-application discussions or planning applications, the City Council must take into account a range of material considerations. Included in this is the provision of infrastructure needed to support the development and the reasonable need arising directly from the development for amenities and facilities. Government guidance makes it clear that the community at large should not be disadvantaged as a result of development proposals and that it is reasonable to expect developers to contribute towards the cost of infrastructure, amenities or facilities arising directly from their development.

3.2 Section 106 of the Town and Country Planning Act of 1990 allows a local planning authority to enter into a legally binding agreement or planning obligation with a developer to allow for contributions to be made. The obligation is sometimes known as a Section 106 Agreement and is negotiated between the local planning authority and the developer. It sets out what the developer is required to do to minimise the impact of their development on the local area and to meet the infrastructure and community needs stemming from the development. It is not intended that the developer will pay for facilities to meeting existing deficiencies in an area. Planning obligations should only be sought where they are:

- Necessary
- Relevant to planning
- Directly related to the proposed development
- Fairly and reasonably related in scale and kind to the proposed development
- Reasonable in all other respects

3.3 Contributions can be made by on site provision of infrastructure, facilities or amenities or by financial contributions to the local planning authority.

3.4 At the national level, further guidance on developer contributions is contained in Circular 5/05, the Barker Report, and an ODPM Consultation Document on Planning Gain Supplement (December 2005). The Group discussed these reports but noted that until the Government has concluded its deliberations, it is only Circular 5/05 that can be regarded as existing policy guidelines. At the local level, the City of Leicester Local Plan (2006) sets out the framework and policy context within which contributions can be sought.

3.5 More recently (August 2006) the Audit Commission have produced a set of reports highlighting good practice in this field and where to find it. The findings of our own work on Developer Contributions are consistent with the findings of the Audit Commission. Also the Audit Commission have produced a consultation paper on the future of the Planning Delivery Grant, this paper more closely aligns the

delivery of affordable housing targets with the payment of a new housing and planning delivery grant. Our current performance in relation to delivering affordable housing through the planning system is quite poor and currently we would not score very highly against this grant.

4. A Summary of Possible Developer Contributions

4.1 It is important that the Council has an agreed list of items for which it will seek to secure developer contributions. Attached as Appendix 2 under the heading of “Planning Obligations Summary” is a list of 23 such items. The list relates to Local Plan policies and sets out where necessary the criteria or formulae that would be used to calculate individual contributions. The department or individual responsible for each item have also been listed. This summary was agreed by the Member Group.

5. Processes for Handling Developer Contributions

5.1 If the City Council is to make the most effective use it can of developer contributions, the various processes for dealing with them must be clearly set out and understood by all concerned. It has been a lack of understanding of the processes that in the past has at times led to difficulties.

5.2 The Member Group explored the processes via four flowcharts:

- (i) The pre-application stage
- (ii) The planning application stage
- (iii) The post planning decision completing the Section 106 Agreement stage
- (iv) The post decision monitoring stage

5.3 The flowcharts are designed to show how the various processes work and start from the premise that the Council should set out the list of contributions it will be seeking as soon as it can in the process. The flowcharts make provision for various officers to be involved in the process but the Member Group concluded that there should be a single point of contact between the developer and the Council and that this should be provided by the Planning Officer. The flowcharts also make provision for Members and in particular Ward Councillors to be involved in the process. Their local knowledge can be very helpful in advising on local priorities for developer contributions.

5.4 Details of the flowcharts are given in Appendix 3. A key issue here is that the City Council is under pressure to determine planning applications as quickly as possible to meet Government targets (that directly affect the Council's CPA rating). Time consuming processes will not therefore help in this respect. The flowcharts may initially look to be complex but are designed to clarify the processes – that clarity should make implementation more transparent and therefore easier and quicker. The flowcharts were approved by the Member Group.

6. Viability Appraisals

6.1 The list of developer contributions that could be required for many schemes in the City could be very long. The City Council is aware that some schemes, particularly regeneration projects, are already at the margins of viability. If the Council presses for many possible contributions, it will simply mean that the schemes will not be viable, they will not happen and the City will lose out on investment and regeneration.

6.2 In an attempt to measure the viability of scheme, developers are asked to produce a development appraisal, which is then examined by Property Services staff. Based on their knowledge of the market conditions in the City, they will

check that the figures and assumptions used in the appraisal seem to be reasonable. They will then be able to draw conclusions on the overall viability of a scheme and what it can therefore afford in terms of developer contributions.

- 6.3 The Member Group received a presentation on this work. A key issue from the discussion was how land values are handled in the appraisals. In an ideal world the City Council would set out the contributions required at an early stage and these would then influence the amount paid for the land or property being acquired. However, land prices are influenced by many other factors such as the potential for securing a higher value planning permission or for some owners, a refusal to sell a site unless a certain land value is achieved.
- 6.4 The Member Group also discussed the amount of profit which could be regarded as being acceptable. This to a certain extent depends on the nature of the scheme – the more risky a project is the more reasonable it is to allow for a higher profit. Leicester currently suffers from being a location where construction/refurbishment costs are quite high but end values are low. This limits the scope for securing contributions. However, if end values can be uplifted (for example, by investing in public realm improvements) then contributions overall could be increased. The extent to which funding from other sources (e.g. EMDA or the Local Transport Plan) could be identified was also discussed. This would mean that certain developer contributions could be reduced if these items could be funded in other ways thus increasing the possibility of contributions for other things such as affordable housing.
- 6.5 The Member Group agreed to the continued use of viability appraisals and to accept the expert advice offered by Property Staff. The Group also agreed that training on development appraisals should be included as part of the regular training for those sitting on the Planning and Development Control Committee.

7. Prioritisation Policy

- 7.1 Given that the City Council will often be facing a situation when not all of the contributions requested can be provided, the Group discussed a policy which would set priorities for deciding on contributions. This takes the summary of developer contributions and the flowcharts as the starting point for the policy. It then goes on to set out the following:
- Priority one will be to provide for the physical infrastructure needed to deliver the project as without this, the scheme will not proceed
 - Priority two will be to provide for essential community needs – these would be a first call on developer contributions.
 - Priority three will be to provide for the other planning obligations listed in the summary – these would be a second call on developer contributions.
- 7.2 The prioritisation policy is attached as Appendix 4 under the heading of “Developer Contribution Guidance for Officers”. It again makes the link between the amount available for contributions and land values and the need to identify funding from other sources so that contributions used for other items can be maximised.
- 7.3 The Group also considered the possibility of using a tariff approach to contributions. Within designated areas (for example the LRC intervention areas), it may be appropriate to apply a tariff whereby developers pay an agreed standard level of contributions, which then go into a central “pot”. These are then used to fund infrastructure works and other items where the scale is such that costs could not be met by one developer alone. The City Council would

administer such a scheme and decide on how the funds received should be spent. The Group supported the tariff approach where the level of development proposed was substantial enough to warrant such an approach. More work is needed on the tariff approach and it was agreed that consultants should be asked to develop this work in conjunction with the LRC – this process has started.

8. Legal Services

8.1 The Group discussed the role played by Legal Services in the developer contributions process. Legal Services have a key role to play in drawing up the Section 106 Agreements. Given the time constraints that currently operate it is essential that these are dealt with as quickly as possible. To ensure that this happens, the Group concluded that:

- There needs to be early involvement of Legal Services staff in the process.
- Standard agreements, standard clauses and standard covenants should be used wherever possible.
- As an alternative to using a legal agreement, conditions could be used to cover contributions. This would only be applicable where relatively small amounts of money were involved.
- Legal Services would if necessary continue to use external solicitors to deal with Section 106 Agreements. This helps to ensure that time targets are met. External solicitors are more expensive than using in house staff but the legal costs for Section 106 Agreements are met by the developer.

9. Corporate Working Arrangements and a Developer Contributions Officer

9.1 Developer contributions have in the past been dealt with on an application by application basis. This has sometimes created difficulties. In an attempt to improve co-ordination in our handling of contributions and to achieve greater consistency, a Developer Contributions Officer Group is proposed. This would meet on a regular basis and include officers from the various service areas that may attract developer contributions. It would be chaired by a representative from the planning service.

9.2 The strategic objective of the officers group would be to implement the policy of “optimising Developer Contributions and their distribution, tied into the overall priorities of the Council”. It would deal with contributions at the various planning stages as outlined in the flowcharts. It would give a clear steer on the contributions to be requested and act as a mechanism for resolving any conflicting views within different services. Most importantly it will help to ensure that “unified advice” is provided by officers for Members. If there are any differences which cannot be resolved at officer level, the Service Director Planning and Policy will raise the matter with the Cabinet Lead for Regeneration and Planning. Other Service Directors could discuss the matter with their respective Cabinet Leads. The Officer Group would also have a role to play in monitoring the collection of contributions. The Officer Group would work within the parameters set out in the flowcharts and the prioritisation policies covered in Section 7 of this report. In addition to dealing with site specific matters, the Group would also discuss and comment on emerging Central Government Policy on contributions.

9.3 The terms of reference for the Developer Contributions Officer Group are attached as Appendix 5. These were approved by the Member Group.

9.4 There is a considerable amount of work involved in co-ordinating and improving our approach to developer contributions. The Member Group strongly supported the idea of having a Developer Contributions Officer. This post would operate at

a senior level co-ordinating work on developer contributions, seeking to achieve unified officer advice, providing support and advice on negotiations and overseeing the monitoring of contributions secured. This will also involve data management, convening meetings and good communications and the Member Group therefore felt that some administrative support for the Developer Contributions Officer would also be needed.

- 9.5 Budgets will be examined to see if the post can be funded initially from existing resources, maybe underspends from the small and temporary Planning Delivery Grant. In the longer terms, it we will fund the post and any administrative support by top slicing future developer contributions.

10. Data Established and Maintenance

- 10.1 A basic database of developer contributions has been established but this requires further work. It is essential that a comprehensive database is created and maintained. Contributions should be monitored and collected at the appropriate time. Unless this is done the Council could be losing out on large amounts of income. Over the last few years, the City Council has secured contributions amounting to £11.36 million. £3.8 million have already been collected mostly by the Housing Department. £332k is outstanding at the time of writing this report. The rest of the £11.36 million is scheduled for payment in the future, sometimes on a staged basis.
- 10.2 The Member Group agreed that priority should be given to improving our data management and monitoring. This would be a role for the Developer Contributions Officer.

11. Communications

- 11.1 Good communications within the City Council and with developers, partners and the community are essential if we are to maximise our handling of developer contributions. The Member Group agreed that:
- We must provide clear and unified advice. There should be one point of contact between the developer and the City Council and this should be the planning officer, for complex schemes a senior planning officer should lead. Where appropriate, other specialists from the Council may be involved in negotiations to provide technical input.
 - A leaflet/information sheet should be prepared for developers setting out the Council's list of potential contributions, its prioritisation policies and explaining the processes involved.
 - Member and in particular Ward Councillors should where appropriate be involved in the process (see the flowcharts). Members should also receive further training on the developer contributions issue.

12. Progress and Future Actions

- 12.1 Appendix 7 provides a summary of the progress made by the Member Group and a recommended action plan. Key points have been incorporated into this report. The Officer Group and the s106 Officer will be responsible for implementing the Action Plan. The initial priorities will be the appointment of a Developer Contributions Officer and the establishment of a Developer Contributions Officer Group. The Member Group endorsed this approach.

13. Financial, Implications

- 13.1 In recent years City Council has secured S.106 contributions amounting to over £11m and this is likely to increase given the significant number of developments happening in the City. At the moment there are no dedicated resources available for monitoring and co-ordinating the spending of the money. There is a need to improve systems and procedures for monitoring and recording the use of money obtained to ensure its collection and use within specified timescales.
- 13.2 Developer Contributions Officer and the related administrative support is estimated to cost £62k p.a. This cost will be extracted from the S.106 contributions, thus having no impact on the departmental budget. Such a policy has been adopted by number of other local authorities. Any transitional costs in moving towards funding from S106 agreements will need to be found from Planning and policy divisional budget.

(Martin Judson , Head of Finance R&C)

14. Legal Implications

- 14.1 The proposals contained in this report in relation to planning obligations accords with current statutory provisions (Section 106 Town and Country Planning Act 1990) as clarified by case law and government guidance. As the report identifies, however, changes to planning obligations are likely depending on the government response to the Barker report and any revised statutory provisions to deal with the proposed Planning Gain Supplement.
- 14.2 Prior to the setting up of the all party member/officer group, Legal Services had already prepared a standard draft Section 106 Agreement containing "standard" provisions. Legal Services, following a best value review, has also been restructured and an additional planning assistant post has been created. A procurement exercise has also been undertaken to appoint specialist planning solicitors to assist when necessary.
- 14.3 By their very nature, planning obligations being agreements can be subject to delays affecting positions taken by applicants/developers in the separate negotiations concerning the obligation after planning permission has been granted. Earlier involvement in the consideration of planning applications that require obligations by Legal Services will minimise delay.
- 14.4 The use of conditions in relation to financial payments required to be made to the Council as a result of the planning application need a degree of care and will be kept under review pending any emerging case law/revised government guidance.
- 14.5 Further work will be required in terms of finalising the appropriate clauses to be included in Section 106 Agreements that will require contributions to be made towards the funding of the work to be undertaken by the proposed Developer Contributions Officer.

(Anthony Cross, Head of Litigation)

15 Background Papers – Local Government Act 1972

Reports and notes prepared for the Member/Officer Group on Developer Contributions meetings held on 20 December 2005, 16 January 2006, 1 February 2006, 1 March 2006, 23 March 2006 and 13 June 2006.

16 Consultations

The Cross Party Member Working Group and
Representatives from the following Council Services:

Highways

Urban Design

Development Plans

Development Control

Housing

Legal

Property

Parks and Green Spaces

Education

Finance

Leicester Regeneration Company