

Scrutiny Committee Report



Report of Head of Development and Regeneration

Author: Stephen May

Telephone: 01235 422479

Textphone:

E-mail: stephen.may@southandvale.gov.uk

Cabinet member responsible: Robin Bennett

Tel: 01865 858680

E-mail: robin.bennett@southoxon.gov.uk

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Financial Contributions in lieu of on-site delivery of affordable homes

Purpose of Report

1. To advise Committee on circumstances where affordable housing financial contributions might be accepted in accordance with planning policy requirements.
2. To provide an overview of off-site commuted sums and viability appraisals, and the considerations which underpin the calculation of financial contributions.

Background and Current Situation

3. At a previous meeting of Scrutiny Committee in October 2020, Members expressed concern that any affordable housing financial contributions received from developers for off-site provision must be sufficient, and reflect full value for the council, to enable to provision of affordable homes through the use of the sums collected. This paper sets out the existing process and proposals to update the process.
4. When considering planning applications for new development, we consider proposals against adopted South Oxfordshire Local Plan 2035 Policy H9 and seek affordable housing on-site. However, there are circumstances where this is not possible, or planning guidance does not permit, and an off-site contribution is collected by the Council instead, for investment in affordable housing schemes elsewhere in the district.

5. The Government's National Planning Policy Framework (NPPF) states at paragraph 62 that planning policies should specify the type of affordable housing required, and expect it to be met on-site unless:
 - a) off-site provision or an appropriate financial contribution in lieu can be robustly justified; and
 - b) the agreed approach contributes to the objective of creating mixed and balanced communities.

6. Local Plan Policy H9 seeks 40% affordable housing for all housing sites over 10 dwellings or 0.5 hectare, and sets out that these should be delivered on-site. There are however some exceptions to delivering the affordable on-site, which are as follows:
 - i. A financial contribution for off-site delivery is where sites deliver a 'part unit' of affordable housing. For example, 40 percent of 31 homes would equate to 12.4 affordable homes, with 12 affordable homes delivered on-site and 0.4 as financial contribution for a 'part unit'. This is the most common reason for an off-site contribution.
 - ii. Another scenario is sites of between 5 and 10 homes within Areas of Outstanding Natural Beauty (AONB), where we collect a financial contribution for affordable housing rather than requiring delivery on-site, in line with Government advice in the NPPF para 63.
 - iii. Thirdly, where the financial viability of a site has been contested by an applicant.
 - iv. Finally, there can be times when the on-site delivery of affordable housing may be considered impracticable.

7. Where an off-site contribution has been agreed by the Council to be justified in line with Policy H9, the method for securing it is that a commuted sum contribution is calculated using a standard formula. This formula has been tested at planning appeals and has been robust. A Section 106 legal agreement linked to the planning application is used to secure the financial contribution.

8. In December 2020 the council's Planning Committee attended a question and answer session, which explained the way in which financial contributions are calculated using a standard formula developed for the council by financial consultants BNP Paribas. The formula is used to calculate 'part unit' contributions, and where affordable homes are not delivered on site for other reasons. An extract from the formula is provided at Appendix 1.

9. The principle of the financial contribution calculated in accordance with the council's established methodology is that it should reflect the cost to a developer of the on-site delivery of affordable homes. This is a standard and accepted approach in the industry and used throughout the England.

10. When affordable homes are provided on an application site they are acquired by a Registered Provider (housing association) in almost all instances. The delivery of

the affordable homes is a developer contribution. This is in accordance with Local Plan 2035 Policy H9 requirements. The affordable homes are purchased from the developer by the Registered Provider (RP). However, the RP does not pay full open market value for the homes. The RP offer reflects its borrowing requirements for the project, and the rental stream and shared ownership sales income needed to support borrowing repayments.

11. The financial contributions sought from developers, whether for part units, or on-site delivery in its entirety do not, therefore, represent the entire cost of providing a new affordable home. The contribution is lower than the entire open market value. This is because the contribution represents the gap between what an RP is able to pay a developer for a new home, and the open market value of such. This 'gap' is the cost to the developer of providing the affordable homes as a planning obligation.
12. As outlined above, there are circumstances where a planning applicant contests the financial viability of delivering affordable housing, asserting that they are unable to meet a planning policy compliant 40% affordable housing level on site due to the costs associated with delivering a scheme. The National Planning Policy Framework and Planning Practice Guidance (24 May 2021) requires planning authorities to take into account the financial viability of a development in considering a planning application.
13. Planning applications citing financial viability as reason for delivering reduced S.106 contributions (including affordable housing), or no S.106 contributions, are thoroughly scrutinised by the council. Unlike calculating part-units which is a clear and established calculation, for viability arguments there is no standardised formula to assess the level of contribution. The process is one of negotiation, based around planning policy, our S.106 Supplementary Planning Document and the three tests set out under the Community Infrastructure Levy legislation. Officers often engage the services of an appropriately qualified specialist to ascertain development viability where sought contributions are challenged. Officers, including senior planning management, negotiate with the applicant over the appropriate contributions.
14. In assessing a case where an applicant has cited financial viability as reason for reduced or nil S.106 contributions, the council or its appointed expert must take into consideration a significant number of factors in order to establish the level of contributions a site is capable of supporting (if any). In broad terms, this will include build costs, the anticipated value of the completed scheme (what the developer will be able to sell it for), and a reasonable profit for the developer, thus enabling the development to come forward. These costs must be presented by the developer in what is known as an open book appraisal. It is the role of the council or its appointed expert to scrutinise the costs submitted, and to ensure that the information submitted is validated and robustly evidenced.
15. Taking into account the costs of a development, and a reasonable level of profit, there may be residual sums which can be used towards mitigating the development in accordance with planning policy and secured through S.106 contributions. Contributions for requirements such as education, transport, etc take precedence over affordable housing, because of the practical implementation of the housing development and providing the necessary mitigation (a development must have access roads, and provide new occupiers with education facilities etc).

The formula referred to at paragraph 7 (see Appendix 1) does not apply in the case of financial viability appraisals, where calculations are based upon what it is considered a development can afford to contribute, without compromising delivery of the overall development.

16. The Affordable Housing Team has in-house procedures to assist with scrutinising a financial viability appraisal. This helps highlight some of the matters to be considered in a financial viability challenge.
17. Following the adoption of the South Oxfordshire Local Plan 2035 in December 2020, officers are reviewing the process and formula for the calculation of financial contributions where 'part unit' and off-site contributions are sought. This will make sure there is an up-to-date and robust methodology remains in place. Officers have also started the review of the Community Infrastructure Levy Charging Schedule and the associated S106 Supplementary Planning Document.

Climate and ecological impact implications

18. There are no identifiable climate or ecological implications resulting from this report.

Financial Implications

19. There are no direct financial implications arising from this report. Any review of policies may result in financial changes that would be considered as part of the adoption process.

Legal Implications

20. There are no legal implications arising from this report.

Risks

21. There are no associated risks arising from this report.

Conclusion

22. The current process for calculating commuted sums for affordable housing varies according to the reason for the commuted sum, set out in para 6. Where it is for a part-unit of affordable housing, this is a set calculation using a standard formula which is designed to reflect the cost of on-site delivery to a developer. The same calculation applies to housing on small sites in the AONB, and situations where there is a practical or where the council accepts there is a practical reason for not delivering the affordable housing on site.
23. Where it is to address a viability agreement, the process is more complex. Affordable housing financial contributions which result from a financial viability appraisal case are not fixed, because of the way in which viability appraisal submissions must be evaluated, taking account of the many cost-related variables involved. Whilst there are accepted standards relating to the establishment of build cost and development values etc, the viability appraisal process is one of negotiation. The council must assess and scrutinise costs and incomes provided by the developer, to ensure these fall within reasonable and accepted parameters.

Therefore, the council is unable to specify a specific minimum level of commuted sum payment (or on-site contribution) where the applicant has demonstrated that the development is unable to financially support such a payment. If the council were to require a financial contribution over and above that which has been evidenced, the council could be open to challenge at appeal or through the courts.

24. The commuted sum calculation methodology is due to be updated following the adoption of the South Oxfordshire Local Plan 2035, to ensure that the process is up to date and robust. This is expected to be completed within the current calendar year.

Background Papers

- [National Planning Policy Framework](#), June 2019
- [Planning Practice Guidance](#), updated May 2021