

BRECKLAND COUNCIL

Report of Ann Steward, Executive Member for Planning and the Environment to the: Cabinet – 9th September 2008

The Use of Commuted Sums from Section 106 Agreements

1. **Purpose of the Report**

This report seeks Cabinet approval for the use of commuted sums in Section 106 agreements to be delegated to the Executive Member in consultation with the Strategic Director

2. **Recommendations**
Recommend that:
Cabinet approve the allocation of commuted sum monies from Section 106 agreements by delegating authority to the Executive Member in consultation with the Strategic Director.

3. **Information, Issues, Options**
- 3.1 Section 106 legal agreements deliver community benefits through the planning process. Much of what is delivered is provided physically on or adjacent to the site in the form, for example, of affordable housing, public open space or highway improvements.
- 3.2 Due to specific circumstances relating to individual applications, the Council agrees to take a commuted sum of money in lieu of this on site provision.
- 3.3 The Constitution of the Council requires Cabinet approval for the use/allocation of such monies. There is likely to be an increase in the number of sites that commuted sums are accepted as we move towards the new allocations for development within the Local Development Framework and with Growth Point status for Thetford.
- 3.4 The monies which are negotiated fall with three general categories.
- a) Monies received for a specific purpose on a specific site (i.e. money received for play equipment on a particular site) where we are just acting as a trustee and therefore no formal approval is required. These monies may be passed on to a Town or Parish Council.
 - b) Monies taken when the circumstances are less specific i.e. money for an identified recreational need in the vicinity of the site and the Council needs to decide where the money needs to be spent. In these circumstances Cabinet approval would be necessary.
 - c) If we receive monies which are for Norfolk County Council, most money would go straight to them, this would need no approval as we are just a “post box”.

- 3.5 As Members are aware, monies which have been negotiated cannot be spent for any purpose other than that specified in the agreement. The Section 106 officer in Development Control monitors the funds and when they should be paid and spent.
- 3.6 This report proposes that the monies received from legal agreements which are not site specific (as 3.4 b above) should be allocated through delegated authority by Cabinet to the Executive Member in consultation with the appropriate Director. This will speed up the process of progressing schemes. The process is regularly audited to ensure matters are dealt with correctly.
- 3.7 To assist the Executive Member in deciding how this money is to be spent, officers liaise closely with the relevant Town and Parish Council. This liaison is normally in s stages:
- a. The first is during the consultation process for an application and the views of the Town/Parish Council can be incorporated in our thinking re the content of an agreement.
 - b. The Town/Parish Council are given a copy of the planning permission so they will be clear about its content.
 - c. Officers write to the relevant Town/Parish Council advising them when monies have been received and a dialogue is entered into as to how, precisely, this will be spent.

Additionally, if there are any pre-application discussions, the Town/Parish Council can be involved at that stage too.

- 3.8 Cabinet considered a report on 8th January 2008 relating to delegated authority to the Executive Member for commuted sums relating to housing, minute 10/08 refers. This report seeks authority for other monies taken to be dealt with similarly.

4.0 **Options**

- a) To operate within the existing Finance Procedure Rules so that every scheme which includes a commuted sum will be presented to Cabinet for approval.
- b) To allow delegated authority be given to the Executive Member in consultation with the Strategic Director.
- c) To allow section 106 funds to be spent within the terms of the legal agreement by the Strategic Director without reference to Cabinet or the Executive Member.

5.0 **Reasons for Recommendation**

- 5.1 The use of the section 106 monies has already been agreed through the signing of the legal agreement between the Council and the other parties involved. The Council are unable to use the monies for any other purpose.
- 5.2 By allocating the resources through a delegated decision with the Executive Member, in consultation with the Strategic Director (and Section 151 Officer if

necessary) proper controls over the funds would be retained but allow flexibility in terms of the timing and speed of when the monies are used.

6.0 **Risk and Financial Implications**

No significant risks identified given 3.3 above.

7.0 **Legal Implications**

None

8.0 **Other Implications**

a) Equalities: None

b) The Section 17, Crime & Disorder Act 1988: No specific assessments have been undertaken at this stage. These will however be undertaken on each initiative following Cabinet support of the Action Plan.

c) Section 40, Natural Environment & Rural Communities Act 2006: None

d) Human Resources – None

e) Human Rights: None

f) Other: None

9. **Alignment to Council Priorities**

9.1 The matter raised in this report falls within the following council priorities.

9.2 A well planned place to live which encourages vibrant communities.

10.0 **Ward/Community Affected**

All wards as a District wide issue.

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Key Decision Status (Executive Decisions only):

The recommendations contained within this report are not a key decision.