

# Affordable Housing Commuted Sums Spending Policy Report

For Cabinet on 21 September 2023

## Summary

**Lead Member:** Cllr Hugo Pound – Cabinet Member for Housing and Planning

**Lead Director:** Paul Taylor- Director of Change and Communities

**Head of Service:** Gary Stevenson – Head of Housing, Health and Environment

**Report Author:** Tobi Phillips – Affordable Housing and Enabling Officer

**Classification:** Public document (non-exempt)

**Wards Affected:** All

Approval Timetable	Date
Management Board	18/01/2023
Portfolio Holder	02/09/2022
Communities and Economic Development CAB	6 September 2023
Cabinet	21 September 2023

## Recommendations

Officer recommendations as supported by the Portfolio Holder:

1. That the Cabinet approves the Affordable Housing Commuted Sums Spending Policy at Appendix A to utilise commuted sums funding paid in lieu of affordable housing provision.
2. That delegated authority be given to the Head of Housing, Health and Environment, in consultation with the Portfolio Holder for Housing and Planning, to make any minor amendments to the Affordable Housing Commuted Sums Spending Policy.

# 1. Introduction and Background

- 1.1 A commuted sum is an affordable housing contribution, paid by a developer to a local authority, where the size or scale of development triggers a requirement for affordable housing, but due to set variables, the delivery of affordable housing on-site isn't considered to be viable. A commuted sum is therefore paid in lieu of on-site affordable housing to meet local needs. A sum is negotiated and agreed between the council and the developer for the purpose of providing affordable housing on an alternative site in the local authority.
- 1.2 Acceptance of commuted sums had been a rare occurrence for the council as affordable housing has generally been delivered on-site, as such the council had not previously set out procedures on how commuted sums in lieu of affordable housing should be calculated and the conditions on how to spend commuted sums when collected. The council has received a substantial number of commuted sums within the last couple of years and there is a likelihood that in the future commuted sum payments will happen on a more regular basis due to the economic climate with high increases of labour and material costs resulting in the delivery of onsite affordable housing becoming less financially viable which will lead to the total value of commuted sum continuing to grow.
- 1.3 The requirement for a commuted sum to be paid in lieu of on-site delivery of affordable housing is secured via S.106 planning agreements. The parameters for spending these sums are detailed in the terms of each planning agreement and may be area or deadline limited. Affordable housing contributions collected via planning agreements should be managed in the context of the planning process, policy, law, regulations guidance and vitally the terms of each s.106 agreement. The contribution must therefore be spent in accordance with the terms of the planning agreement under which they were collected.

## 2. Current position of contributions

- 2.1 The current economic climate poses greater challenges in site viability, as such, there is a greater emphasis on utilising collected commuted sums to meet council objectives to deliver more affordable housing throughout the borough.
- 2.2 Commuted sums, therefore, provide a valuable opportunity for the council to ensure that where delivery of affordable housing on a site isn't viable, alternative provisions can contribute towards the councils' aims of delivering and facilitating more affordable housing to meet local needs.
- 2.3 The council currently holds a total of £5.083m in affordable housing contributions. Many of these contributions do not have a date specified within the planning agreement by which they must be spent. Where a date has been specified for the contributions to be spent, these range from April 2027 through to August 2031.

- 2.4 It is therefore important for the council to have an agreed approach to enable the timely and appropriate use of these monies as there is a risk to the Council that private developers will seek a refund of any unspent monies paid via an s106 agreement if the funds are not spent within the specified timeframe, and the council could be subject to FOI requests regarding use and information of the commuted sums and will need to provide evidence indicating when sums were committed for use.

## 3.0 Commuted Sum Spending Policy

3.1 The Commuted Sums Spending Policy has been drafted with consideration to TWBC's existing planning agreements and current housing policy framework as well as the council's housing objective to provide more social rent homes. The Council can use s106 commuted sums in several ways to enable the delivery of more affordable housing within the borough and therefore a flexible approach will be taken when deciding whether affordable housing projects should be provided with s106 funding, these approaches will include the following:

- To provide funding for the development of affordable housing at social rent levels in schemes
- To subsidise alternative developments to allow for a greater provision of affordable housing at social rent or to create a more favourable mix of social rented properties vs affordable rented/immediate/private rented properties.
- To fund extra units of social rent affordable housing units on existing developments.
- To contribute towards forward funding/kick-starting affordable housing schemes, funds & strategies in order to facilitate the delivery of affordable housing in conjunction with other sources of funding such as Community Housing Fund or the Local Authority Housing Fund.
- To reduce funding gaps for pipeline/current affordable housing schemes.
- To assist with works required to bring a void affordable housing property back to a usable standard.
- To assist with bringing empty buildings back into use as affordable housing
- Secure long-term temporary accommodation, to ease housing needs and facilitate transitions into affordable housing.

- 3.3 These approaches to the spending of commuted sums will provide the scope for the council to utilise funding to promote genuinely affordable avenues into affordable housing ensuring funding is spent within the specific section 106 constraints, this includes using Contributions in conjunction with other affordable housing funds such as the Local Authority Housing Fund (LAHF) which is grant from the Department for Levelling Up, Housing, and Communities (DLUHC) to support selected local authorities in England to obtain and refurbish properties in order to provide affordable housing for the qualifying eligible cohort of Ukrainian and Afghan refugees and a lasting legacy of additional affordable homes for the wider population of Tunbridge Wells in housing need.

## 4.0 Options Considered

- 4.1 **Option 1** - The Council implements the commuted sum spending policy that aligns with current housing objectives ensuring affordable housing commuted sums collected are utilised to facilitate genuine affordable housing in the form of social rent general need property units,
- 4.2 **Option 2** - The Council continues without a commuted sum spending policy and position statement. This means continuing to have an informal ad-hoc arrangement in place regarding both how commuted sums are subsequently spent when received in lieu of onsite affordable housing, which potentially risks the council not receiving enough value of offsite affordable housing to deliver other forms of affordable housing equating to less affordable housing being delivered, and risking funds being returned to developers.

## 5.0 Preferred Option and Reason

- 5.1 **Option 1** is the preferred option that cabinet approve the affordable housing commuted sum spending policy as the policy proposes a mechanism for prioritising and utilising any affordable housing commuted sums received by the council. It sets out the circumstances in which affordable housing commuted sums can be requested and the ways it can be spent to enable the delivery of additional affordable housing which should ensure funds are spent reducing the risk of potentially returning funds back to developers.

## 6.0 Consultation on Options

- 6.1 The Commuted Sum position statement and spending policy have been written with consultation from the Kent Housing Group's Strategic Housing and Enabling Subgroup, and with other Kent Local Authorities adopting similar strategies therefore in a position to provide guidance and framework in Affordable housing commuted sums policies and procedures.

### Recommendation from Cabinet Advisory Board

- 6.2 The Communities and Economic Development Cabinet Advisory Panel were consulted on 6 September 2023 and agreed the following:

*Cabinet Advisory Panel approved the recommendation to Cabinet for the adoption of Affordable Housing Commuted Sums Spending Policy.*

## 7.0 Implementation

- 7.1 The Commuted sum spending policy will be digitally available for access to various stakeholders such as Developers and Registered providers.

## 3. Appendices and Background Documents

Appendices:

- **Appendix A:** Affordable Housing Commuted Sum Spending Policy and Procedure

## 4. Cross Cutting Issues

### A. Legal (including the Human Rights Act)

Affordable housing position statement should be helpful in calculating the commuted sums and give clarity on spend with in the current climate, and with small quantum's of affordable units not always appealing to RPs, this sort of guidance can be very helpful.

Cheryl Parks Senior Legal advisor Planning- 24/08/2023

### B. Finance and Other Resources

Providing Developers with clarity of the methodology to calculate Affordable Housing Commuted Sums should support transparency and help them plan financially to deliver new sites.

Jane Fineman Head of Finance and Procurement 29/08/2023

### C. Staffing

The Affordable housing commuted sum spending policy will have no implications to staffing.

Tobi Phillips Affordable Housing and Enabling Officer 03/08/2023

### D. Risk Management

**The risk in relation to commuted sums the council currently faces**

Risk	Consequence	Controls required
Risk of having to return unspent commuted sums, plus interest, in the Council's Affordable Housing Fund if not	Loss of existing funding Less affordable Housing delivered.	The recommendations outlines a route to enable the best use of funding, to maximise opportunities presented through the Affordable Housing Fund

utilised in a timely manner.		and achieve best value for residents.
The increased risk that the delivery of affordable housing in planning applications is increasingly becoming less viable due to economic factors and the council doesn't have procedures in place to optimise commuted sums for affordable housing	Inadequate funding Less affordable housing delivery	The Affordable housing commuted sum policies set out clear calculations for affordable housing which take into account socio-economic variables.  Commission viability report that sets out a framework of improving site planning viability

Tobi Phillips Affordable Housing and Enabling Officer 03/08/2023

## **E. Environment (inc. Biodiversity) and Sustainability**

The Affordable housing commuted sum spending policy help to ensure that the council is receiving the equivalent value in sums for the provision of affordable housing to be utilised to assist in the delivery of affordable housing. Environmental factors such as energy-efficient building requirements and the overall impact a development may have on the surrounding environment will be taken into consideration in any decision to fund affordable housing developments.

Tobi Phillips Affordable Housing and Enabling Officer 03/08/2023

## **F. Community Safety**

The Affordable housing commuted sum spending policy has no implication for community safety or crime with the borough.

Tobi Phillips Affordable Housing and Enabling Officer 03/08/2023

## **G. Equalities**

The Affordable Housing commuted sum spending policy has no equality implications for the council.

Tobi Phillips Affordable Housing and Enabling Officer 03/08/2023

## **H. Data Protection**

The Affordable Housing commuted sum spending policy on data protection.

Tobi Phillips Affordable Housing and Enabling Officer 03/08/2023

## **I. Health and Safety**

The Affordable Housing commuted sum spending policy has no Health and Safety implications for the council

Tobi Phillips Affordable Housing and Enabling Officer 03/08/2023.

## **J. Health and Wellbeing**

The Affordable Housing commuted sum spending policy help to ensure that any decision to request or spend affordable housing commuted sums is to enhance the community of Tunbridge Wells therefore having a positive impact on the health and wellbeing of households in housing need

Tobi Phillips Affordable Housing and Enabling Officer 03/08/2023.