

Cabinet Decision

25 June 2020

Is the final decision on the recommendations in this report to be made at this meeting?

Yes

Affordable Housing Commuted Sums – Former Cranbrook Council Offices

Final Decision-Maker	Cabinet
Portfolio Holder(s)	Cllr Carol Mackonochie
Lead Director	Paul Taylor – Director of Change & Communities
Head of Service	Gary Stevenson – Head of Housing & Environment
Lead Officer/Author	Sarah Lewis Housing Register & Development Manager
Classification	Non-exempt
Wards affected	Culverden & Cranbrook

This report makes the following recommendations to the final decision-maker:

1. That Cabinet's attention is drawn to the contents of the Cabinet report dated 1 December 2016, which is attached at Appendix A, with particular reference to point 3 of the recommendations, which stated:

'That the sum of £313,526.64 is subsequently transferred from as yet uncollected Section 106 Developer funding for affordable housing due from the former Kent and Sussex hospital development, (planning permission TW/10/04041 applies) in early 2018 for the provision of affordable housing in Cranbrook.'

2. That whilst all of the s106 funding for affordable housing received for the development of the former Cranbrook Council Offices (TW/13/02502) has either been spent or is being committed to affordable housing in the Borough, the sum of £263,000, spent outside of Parish of Cranbrook, is transferred back to the former Kent & Sussex hospital contribution and will be earmarked for the provision of affordable housing in the Parish of Cranbrook.

Call-in and Urgency:

In accordance with the provisions of Overview and Scrutiny Procedure Rule 14 in Part 4 of the Constitution, the Chairman of the Overview and Scrutiny Committee hereby gives prior agreement that this decision is urgent and will not be subject to call-in as delay would seriously prejudice the Council's or the public's interest.



Councillor Chris Woodward
Chairman of the Overview and Scrutiny Committee

Explain how this report relates to the Corporate Priorities in the Five Year Plan:

- A Prosperous Borough – Affordable housing built as part of a Section 106 mixed tenure housing scheme assists in enhancing the built environment of our rural towns.
- A Confident Borough - Providing affordable housing assists in addressing social deprivation in the Borough.
- Providing affordable housing solutions for homeless and vulnerable households at rents they can afford.

Timetable	
<i>Meeting</i>	<i>Date</i>
Agreed for publication by Portfolio Holder	23 June 2020
Agreed for publication by Head of Service	24 June 2020
Cabinet	25 June 2020

Tunbridge Wells Committee Report, version: March 2019

Affordable Housing Commuted Sums – Former Cranbrook Council Offices

1. PURPOSE OF REPORT AND EXECUTIVE SUMMARY

- 1.1 To approve the transfer of £263,000 from the former Cranbrook Council Offices s106 contribution to the Kent & Sussex s106 contribution.
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2. INTRODUCTION AND BACKGROUND

- 2.1 The former Council Offices in Cranbrook were sold for redevelopment and the planning consent included a Section 106 Agreement reference 13/02502 at Appendix B.
- 2.2 Due to viability issues on the site and the lack of need for rented sheltered housing in the area, the sum of £313,526.64 was collected in lieu of providing affordable housing on the site, to be enforced via the Section 106 Agreement.
- 2.3 The Agreement did not specify that the contribution should be spent in the Parish of Cranbrook but the Housing Service intended that the sum would be used for the provision of affordable housing in this part of the Borough.
- 2.4 During the time that the Council have held the funds there has not been a project in the Cranbrook Parish to spend the sum on.
- 2.5 However, two projects were identified that did require subsidy to proceed. One was at the Friends Meeting House in Grosvenor Park, Tunbridge Wells, providing housing for vulnerable young people; the second scheme was for affordable housing located in Paddock Wood.
- 2.6 A decision was taken by Cabinet on 1 December 2016 to release the Cranbrook funds for the two projects above, (see Appendix A). This was on the condition that, once s106 contributions from the Kent and Sussex development were received by the Council, the sum of £313,526.64 would be transferred and made available for the provision of affordable housing in Cranbrook.
- 2.7 The reason the Housing Service put this recommendation forward to Cabinet at the time was to acknowledge that this contribution had originated in Cranbrook, and to commit to spending it on Cranbrook based affordable housing schemes in the future if at all possible.
- 2.8 In 2016 the Council transferred £250,000 to Habitat for Humanity. It also committed £63,526.64 to Habinteg Housing Association which eventually did not go ahead. In 2018, the Housing Service used £13,000 of this to part fund a Borough wide Housing Needs Study. A Portfolio Holder report has recently been published, which seeks authority to release the remaining £50,526.64 to

subsidise affordable housing at Brick Kiln Farm in Cranbrook, (see Appendix C).

- 2.9 Whilst all the £313,526.64 from the Cranbrook Council Offices has been spent or allocated, we have recently received legal advice to suggest that having moved funding to match this amount from the Kent and Sussex development s106, the Council could be at risk of appearing not to have committed or spent the former Cranbrook Council offices contribution within the five year timescale, which expired on 22 June 2020. This could result in the developer requesting that the Council repay the contribution.
- 2.10 This report seeks authority to transfer the £263,000 spent outside of Cranbrook back to the Kent and Sussex contribution.
- 2.11 This report also provides the opportunity to reiterate that the net sum of £263,000 for funding (the original 313,526.64 minus the £50,526.64 for the Brick Kiln projected in Cranbrook) is ear marked for affordable housing projects in Cranbrook.
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3. AVAILABLE OPTIONS

- 3.1 One option would be to 'do nothing'. The £313,526.64 collected from the Cranbrook Council offices site has already been spent or committed in accordance with the five year deadline in the s106 Agreement. However, as explained above, because of the transfer from the Kent and Sussex development fund, there is a risk that this sum could potentially be claimed to be unspent/committed by the developer who provided the section 106 funding from former Cranbrook Council offices development.
- 3.2 Option 2. To transfer £263,000 back to the Kent & Sussex contribution, there can then be no question that the whole of the Cranbrook Council Offices contribution totalling £313,526.64 has been spent/committed in accordance with the s106 agreement. £263,000 of the Kent and Sussex contribution will be earmarked for the provision of affordable housing in the Parish of Cranbrook.

4 PREFERRED OPTION AND REASONS FOR RECOMMENDATIONS

- 4.1 By agreeing to proceed in accordance with Option 2, there is no doubt that the conditions of the Section 106 Agreement for the Cranbrook Council Offices site are fulfilled.

5 CONSULTATION RESULTS AND PREVIOUS COMMITTEE FEEDBACK

- 5.1 Ward Members for Cranbrook have been consulted as part of the Portfolio Holder report to commit the sum of £50,526.64 for the Brick Kiln development.
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6 NEXT STEPS: COMMUNICATION AND IMPLEMENTATION OF THE DECISION

- 6.1 If approval is given, Finance will transfer £263,000 from the former Cranbrook Council Offices s106 to the Kent and Sussex s106.
- 6.2 The Housing Service will continue to identify a project(s) in Cranbrook that can deliver affordable housing using the contribution available. This will be reported to Cabinet or the Portfolio Holder in the usual way.

7 CROSS-CUTTING ISSUES AND IMPLICATIONS

Issue	Implications	Sign-off
Legal including Human Rights Act	Section 106 planning obligation agreements provide a mechanism for collecting contributions from developers through the planning process. Section 106 contributions can only be used for the purpose specified in the agreement. The use of the contributions as detailed in the report was in accordance with the terms of the relevant agreement and the sums were spent within the five year timescale specified agreement.	Keith Trowell, Team Leader (Corporate Governance), MKLS 23.06.20
Finance and other resources	This reports recommends the transfer of funding between relevant section 106 accounts and protects the Council's position.	Jane Fineman Head of Finance, Parking and Procurement 24/06/20
Staffing establishment	There are no staffing implications	Sarah Lewis Housing Register & Development Manager 24/04/20
Risk Management	This report provides clarity over the usage of the Section 106 contributions from the former Council Office site in Cranbrook. It also highlights that an element of the section 106 contribution from the former Kent and Sussex Hospital site is earmarked for use for affordable housing in Cranbrook.	Sarah Lewis Housing Register & Development Manager 22/06/2020
Data Protection	There are no Data Protection implications	Sarah Lewis Housing Register & Development

		Manager 22/06/2020
Environment and Sustainability	There are no implications as the scheme in which the money is to be spent already has full planning approval	Sarah Lewis Housing Register & Development Manager 22/06/2020
Community Safety	There are no implications as the scheme in which the money is to be spent already has full planning approval	Sarah Lewis Housing Register & Development Manager 22/06/2020
Health and Safety	There are no implications	Sarah Lewis Housing Register & Development Manager 22/06/2020
Health and Wellbeing	The provision of good quality affordable housing has a positive impact on the health and wellbeing of the occupiers.	Sarah Lewis Housing Register & Development Manager 22/06/2020
Equalities	The decisions recommended through this paper have a remote or low relevance to the substance of the Equality Act. There is no apparent equality impact on end users.	Sarah Lewis Housing Register & Development Manager

8 REPORT APPENDICES

The following documents are to be published with and form part of the report:

- Appendix A: Cabinet Report dated 1 December 2016 'Affordable Housing Commuted Sums Expenditure'
 - Appendix B: Section 106 Agreement former Council Offices in Cranbrook
 - Appendix C Portfolio Holder Report 'Spending of former Cranbrook Offices Affordable Housing Commuted Sum'
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9 BACKGROUND PAPERS

None