

5. BACKGROUND/MAIN ISSUES

Developer Obligations

- 5.1 Section 75 of the Town and Country Planning (Scotland) Act 1997 as amended, gives planning authorities the power to enter into agreements with landowners for the purpose of restricting or regulating the development or use of the land, either permanently or during such period as may be prescribed by the agreement. In addition, they may contain such incidental and consequential provisions (including financial ones) as appear to the planning authority to be necessary or expedient for the purposes of the agreement. Section 69 of the Local Government (Scotland) Act 1973 gives local authorities the power to enter into agreements entered for a purpose that facilitates, or is conducive or incidental to, the discharge of any of their functions.

The Council uses the powers under these Acts to enter into planning agreements with developers that document the mitigation required as a consequence of the development being proposed, on its own, or as a result of more than development in the area.

- 5.2 Agreement on the shape and form of this mitigation to the impact on local communities is currently reached through a negotiation process with individual developers. This may result in a legal agreement, or a negotiation letter. Aberdeen City Council funds a share of Aberdeenshire Council's Developer Obligations Unit, which has service level agreements to negotiate for developer contributions on behalf of both councils.
- 5.3 This negotiation process is closely aligned with the planning process within Aberdeen City Council, and there is regular dialogue between council officers and the shared unit.
- 5.4 Each developer agreement is drawn up on an individual basis and the conditions for payment are unique to each contribution. Each agreement is time bounded, most commonly for a period of 5 years.
- 5.5 Payments from developers in relation to section 75 agreements may be made up front in full, on a milestone basis (on completion of an agreed number of units) or on a quarterly basis. The payment schedule will be set out within each agreement, and are frequently linked to the approval of planning permission.

- 5.6 Subject to the terms of the agreement, when developer funding is received, it will be lodged within an interest bearing Council bank account. In the event of the developer not proceeding with the development, or if there is subsequently a change to the planning permission or the number of units which can alter the value of the contribution, the Council is likely to be bound under the agreement to return any related funds to the developer. Interest at the prevailing bank rates for the period the funds have been held by the Council will also be paid.
- 5.7 A developer may also request repayment of any funds not applied to the uses stipulated in the original agreement or negotiation letter, or within the agreed timescale.
- 5.8 It is possible for developer agreements to be in place for several years before any funds require to be paid, as they can be dependent on the speed at which the developer progresses planning applications or site development.

Negotiation Process

- 5.9 The negotiation process in relation to individual developer contributions will set out the terms under which any related funds can be spent. As the Developer Obligations Unit is negotiating in order to mitigate the impact on communities, the measures agreed may cut across a range of headings.
- 5.10 Contributions currently fall under one of the following headings:
- Community facilities
 - Core paths
 - Cycling
 - Education (Primary & Secondary)
 - Flood prevention
 - Libraries
 - Healthcare
 - Parking / Car club
 - Pedestrian facilities
 - Play equipment
 - Playing Pitches
 - Road Improvements
 - Road Maintenance
 - Sports & Recreation
 - Statutory Traffic Orders
 - Traffic improvements

It should be noted that the nature of these headings means that on some occasions the relevant local authority would be the recipient of funding, and in others funds would be passed to the local health authority.

- 5.11 Some negotiations may also focus on securing a contribution to the Strategic Transport Fund, due to the cumulative impact a series on developments can be expected to have on the transport network. This fund is monitored and managed by Nestrans, the Transport Partnership for Aberdeen City and Shire.
- 5.12 The negotiation for a developer contribution is required to take account of the current existence and capacity of facilities within a local community. As this may not be consistent between communities, different agreements may include different elements from the above list. For example, if a large community hall is already in existence close to the development in question, but the community may lack local play facilities, the negotiation may focus on funding the latter.
- 5.13 Similarly, it is common for negotiations related to larger housing developments to discuss some form of contribution to educational provision in the form of school extensions or new schools. This is due to the additional number of children that can be expected to be resident in the local area once the development has been built, and the pressure this may place on the capacity of existing schools.
- 5.14 Sometimes the requirement to spend developer contributions on mitigation measures, and expanding capacity, can present challenges for the Council. For example, not all schools within the Aberdeen City Council area possess sufficient grounds to allow for expansion of the existing school buildings. Extensions cannot always be built to allow for large increases in school roles resulting from developments in the school catchment area.
- 5.15 These issues can be evidenced by the current plans for extension of Greenbrae Primary School and a replacement Milltimber Primary School. Neither project is fully funded by developer obligation, as primary school facilities already exist in both communities. One project will result in an extension to the existing school; the other will require the relocation of the school to a new, larger site.

Developer Contributions - Projects and Related Challenges

- 5.16 The Development Obligations Unit will advise officers within Aberdeen City Council when a developer contribution has been agreed with the developer.

- 5.17 Project leads for each contribution are identified, made aware of the conditions of funding in each case and will then plan how to utilise the contributions under each heading within the agreed parameters. Each project lead is also made aware of the expiry date for each contribution.
- 5.18 Generally, due to the requirement of funding to be set against permanent mitigation of new developments, expenditure will be related to initiatives which will either create new assets within the community, or expand the capacity of existing assets. It is not uncommon for larger contributions to be part of the funding mechanism for major projects within the Council's Non-Housing Capital Plan e.g. the Greenbrae Primary School extension.
- 5.19 It should be noted that developer obligations will not generally extend to the maintenance of any new assets created. In a time of competing pressures for the Council's financial resources, this can present a challenge for officers to manage on-going maintenance requirements in support of any new facilities created.
- 5.20 Monitoring of developers contributions and the related projects is currently undertaken by officers within Land & Property Assets of Communities Housing & Infrastructure, with regular financial updates from Finance. A database to record the details of developer obligations was created in the summer of 2015. The unique planning reference for each development is used to identify the related contributions.
- 5.21 The process to create the database also included a detailed review of all contributions to confirm which agreements could be classed as complete. In addition, internal processes are being reviewed to ensure a robust system of monitoring is in place.
- 5.22 In future, due to the nature of developer contribution projects it is proposed that reports on current developer obligations be provided to the SIP & Capital Review Group on a regular basis. Financial monitoring of these projects will also be incorporated into the monthly reporting cycle of the Non Housing Capital programme.
- 5.23 Appendix A to this report includes details of current and recently closed developer obligations. Commitment reporting will be developed in the coming months to improve the reporting to elected members. Reports on the progress of projects related to individual contributions will be provided to this committee.