

Cabinet

18 May 2021

Protocol for Planning Obligations Funding Allocations - Community Schemes

For Decision

Portfolio Holder: Cllr D Walsh, Planning

Local Councillor(s): All

Executive Director: J Sellgren, Executive Director of Place

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Report Status: Public

Recommendation:

That Cabinet:

1. Agrees the protocol for the award of planning obligations funding allocations to appropriate bodies (Appendix A of this report);
2. Confirms that the protocol will be used to consider eligibility of those bodies seeking to spend s106 planning obligations in accordance with the purposes for which the obligations were collected; and
3. Agrees the protocol will come into effect on 19 May 2021.

Reason for Recommendation:

To provide a framework for managing the allocation of s106 developer contributions to appropriate bodies which is clear, consistently applied, and which secures appropriate levels of accountability.

1. Executive Summary

- 1.1 Section 106 of the Town and Country Planning Act 1990 (as amended) allows local planning authorities to secure financial contributions from development to make a development acceptable in planning terms where it would otherwise be unacceptable. This is normally achieved by using the contributions to fund mitigation measures or specific infrastructure that is needed as a result of the development. Developer contributions under s106 are separate and in addition to the Community Infrastructure Levy (but should not duplicate this).
- 1.2 Developer contributions that are not collected via CIL are the subject of a legal agreement which will usually specify to a greater or lesser extent the planning purposes for which the money can be spent. It is normally the case that funds have to be spent within 10 years of receipt and, if not, the funds may be returned.
- 1.3 Under the provisions of the General Power of Competence (GPC)¹, local authorities have been given additional flexibilities to promote the economic, environmental and social well-being of their areas, as long as this is not prohibited by other legislation. It applies to all principal councils (district, county and unitary councils etc). It also applies to eligible² parish and town councils. Under these provisions, it has been possible for eligible parish and town councils to take on the responsibility of managing developer contributions which have been collected for local community infrastructure. Where this applies, funds can be transferred by the Local Planning Authority to the relevant 'competent' body to deliver the infrastructure. This recognises the role of towns and parishes as the first tier of local government and ensures that the funds are managed at a suitably local level to deliver the infrastructure needed by the community.
- 1.4 There are occasions, however, when the town or parish council are not GPC-eligible but could still be best placed to deliver the infrastructure. Alternatively, they may elect not to take on management of developer contributions, for instance where they do not have the resources necessary to administer the funds or procure the projects to deliver the infrastructure. It is also feasible that the terms of the s106 obligation could require, or benefit from, involvement of a specific expert body to deliver a particular piece of infrastructure. In such situations there may be better-placed organisations with the necessary capabilities and accountability to manage the funds, or alternatively the role could reside with the Local Planning Authority.
- 1.5 Whilst in many cases the town or parish council will be well-placed to manage such funds, it is important that due diligence is followed regarding

¹ Localism Act 2011

² An eligible council is one which has resolved to adopt the GPC, with at least two thirds of its members being declared elected and the Clerk must hold an appropriate qualification

the appropriateness of the relevant body to manage the funds before the money is handed over. This will also require the necessary assurances that the funds will be spent in accordance with the planning/legal requirements.

- 1.6 A protocol for planning obligations funding allocations has therefore been prepared in order to provide clear principles and a consistent approach, while also securing accountability for managing the obligations. This is set out in **Appendix A**.

2 Establishing a Protocol

2.1 When developer contributions are secured for local/community infrastructure it is often the case that the town or parish council will be best placed to oversee the implementation of these funds. This is something that was practiced by legacy authorities prior to April 2019 and to-date those practices have been subsumed within the new authority. However, Dorset Council currently has no formal protocol in place to guide decisions regarding the governance of community schemes funding. This raises potential risks:

- In the event that s106 funds are handed over to another body but are not spent in accordance with the purposes for which the money was collected, Dorset Council could face claims against it from the contributing developer to repay the funds;
- Where a body other than a town or parish council is interested in managing the implementation of the monies, there is currently no established process for assessing the suitability of that body, or for deciding on whether or not they would be qualified or better-placed than the town or parish council;
- It is important, even in the case of a town or parish council, to get suitable assurances that it complies with the general powers of competence and/or is otherwise 'competent' for the purposes of delivering the infrastructure.

2.2 It is therefore proposed that Dorset Council establishes a protocol for those situations where it is expecting to hand over developer contributions to local bodies. This does not have any bearing upon the purposes for which the money was collected in the first place as the subsequent spending is required to meet the terms of the legal agreement. However, it will provide the Council with a clear decision-making route for confirming the body that is best-placed to deliver the spending, and will establish the necessary safeguards to ensure appropriate accountability.

3 Summary of protocol

3.1 The protocol emphasises that Dorset Council is the accountable body for the spending of developer contributions and, when entrusting another body to discharge this function, it must ensure that:

- the funding is spent on facilities that can be demonstrated to be required because of the new development taking place;
- the projects supported are necessary, viable, will deliver the required social and community benefits, and will be well managed; and
- the process for handing over contributions is transparent and fair to all.

3.2 The protocol recognises that:

- a) town and parish councils that have the general power of competence will normally be well-placed to manage such funds due to their democratic accountability and ability to take a long-term interest in the delivery/ management of the project;
- b) there may be circumstances where such councils are not GPC-eligible bodies, or which decide not to take on the responsibility for managing the contributions (for example due to there being a better-placed organisation to implement the project);
- c) other 'not for profit' organisations may bid to manage the funds, subject to being able to demonstrate they have a general power of competence and are otherwise able to offer assurances about their suitability to the role;
- d) the recipient body will be required to enter into an agreement with the Dorset Council to confirm that the money will be spent in accordance with the purposes for which it was collected, and where unspent, liability for returning the funds will rest with the recipient body.

4 Financial Implications

3.1 Developer contributions are funds which are collected from developers via the planning system for specific mitigation and infrastructure purposes. The proposed protocol will provide the necessary assurances that, where community scheme allocations are made, this will be spent on the delivery of infrastructure for which it was collected, and will minimise the financial risk to Dorset Council of any claims by developers for the return of unspent funds.

4. Well-being and Health Implications

4.1 The protocol should streamline the process for allocating developer contributions to appropriate competent bodies in a way that is transparent and accountable. This in turn should assist in the effective delivery of social infrastructure which will benefit the health and well-being of local communities.

5. Climate implications

5.1 The collection and spending of developer contributions takes place in accordance with the adopted development plan policies which, in combination, seek to promote sustainable development. This might include local infrastructure which can meet needs locally (thereby reducing the need to travel) and mitigation measures to offset the impacts of development, such as natural greenspace, habitat creation and climate adaptation measures. The protocol will positively assist in delivering the principles of sustainable development.

6. Other Implications

6.1 None to report.

7. Risk Assessment

7.1 Having considered the risks associated with this decision, the level of risk has been identified as:

Current Risk: Medium
Residual Risk: Low

8. Equalities Impact Assessment

8.1 The protocol sets out a framework for managing developer contributions collected under the provisions of adopted statutory policies and does not affect the purposes for which these are earmarked. The statutory development plans have been the subject of Equalities Impact Assessment.

9. Appendices

**A: Dorset Council Protocol for Section 106 Community Schemes
Funding allocations**

10. Background Papers

10.1 None

Footnote:

Issues relating to financial, legal, environmental, economic and equalities implications have been considered and any information relevant to the decision is included within the report.