

## THE ROYAL BOROUGH OF KENSINGTON AND CHELSEA

### OVERVIEW AND SCRUTINY COMMITTEE ON HOUSING, ENVIRONMENTAL HEALTH AND ADULT SOCIAL CARE - 30 APRIL 2009

#### REPORT BY CHIEF HOUSING OFFICER

#### BRIEFING PAPER ON SECTION 106 COMMUTED SUMS TO BE USED FOR THE PROVISION OF AFFORDABLE HOUSING

This report provides Members of the Committee with background information in respect of the use of Section 106 monies secured for the provision of affordable housing

**FOR INFORMATION**

#### **1. Introduction**

- 1.1 Section 106 of the Town and Country Planning Act 1990 introduced the concept of planning obligations which comprises both planning agreements and unilateral undertakings. It enables a planning obligation to be entered into by means of a unilateral undertaking by a developer as well as by agreement between a developer and a local planning authority.
- 1.2 In addition to the provisions within the Act, the government also issued Planning Policy Guidance (PPG) to assist local planning authorities. PPG 3 was the guidance issued in relation to affordable housing. The drafting was non-prescriptive in its approach and left the form of obligation as a matter of negotiation between the developer and the local planning authority.
- 1.3 The non-prescriptive approach of PPG3 allowed for the payment of a commuted sum in lieu of the actual provision of affordable housing on qualifying developments and in the early days of the implementation of the Section 106 provision it was much more common for local planning authorities to accept a payment in lieu than it would be now.

## **2. The Use of Section 106 Monies in The Royal Borough**

- 2.1 The Council has accepted commuted sums, sometimes referred to as Section 106 monies. Finance officers maintain accounts for the receipt, interest accrued and expenditure of the commuted sums as shown in the attached appendix 1. The terms under which commuted sums are used are contained within the Section 106 Agreement on individual developments. The agreement normally states that the monies have to be used within a certain time frame. In August of last year the Planning Department appointed a Section 106 officer. One role of this post will be to ensure compliance on Section 106 Agreements by monitoring all the terms of every agreement held on a departmental data base.
- 2.2 The first payment in lieu of affordable housing made in the Royal Borough was made in 1996. At that time there was a very active development programme by local housing associations, and the Section 106 monies could be used to support those development programmes. Housing association developments are funded through Social Housing Grant, but because of land values in RBKC, they often require additional subsidy, therefore Section 106 monies can make the developments possible.
- 2.3 The former McKay trading estate, now redeveloped and known as Quayside House, is a typical example. The idea to redevelop this site to provide affordable housing and commercial premises was conceived by Stadium Housing Association. However, the purchase costs of the land and the redevelopment costs to provide 108 new homes were such that the proposal was well above the cost criteria operated by the Housing Corporation and couldn't be approved for funding.
- 2.4 It was only possible for the development to go ahead because of a £5.0 million contribution from a private developer in satisfaction of a Section 106 Agreement to provide off-site affordable housing. This contribution from the private sector brought the amount to be funded through public subsidy to approvable levels.
- 2.5 Other examples of affordable housing schemes subsidised by Section 106 funding during this period were the 21 units in Dalgarno Way at the site of the Alexander and 7<sup>th</sup> Feathers Club and 14 units at the Rugby Clubs site in Walmer Road. Both these community centres were in need of re-provision

and such was the value of the land on which they stood that it was possible to enable new community centre buildings through the provision of affordable housing on part of the site.

- 2.6 The high land values and property prices which exist within the Royal Borough makes it very difficult to make use of payments in lieu of affordable housing. However, since the first sums were received in 1996, a total of £6.7 million and been spent to support developments to provide affordable housing. At the time of writing, proposals to use a further £4.07million have been prepared for consideration and approval by the Council's Cabinet.
- 2.7 The direction of local planning policy is evolving towards providing for a lower threshold on residential developments at which point an element of affordable housing becomes a requirement. Consequently, particularly on smaller development proposals which are just within the criteria to require an affordable housing contribution, it might not always be possible in design terms or for viability reasons to provide affordable homes, either on-site or off-site. On such developments it would be more pragmatic to accept a commuted sum in lieu of affordable homes.
- 2.8 It does seem likely in the coming years that there will be more occasions arising when it would be more pragmatic to accept a commuted sum. As a result, proposals are being developed to create an "Affordable Housing Fund" in which these sums would be pooled and held for use in the provision of affordable housing. To enable the funding to be spent, it will be necessary to allow for as much flexibility as possible in the use of money held in the fund.

## **FOR INFORMATION**

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**Background Papers used in the Preparation of this Report:**  
None

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