



CABINET

REPORT

16 May 2012

Subject Heading:	Use of s106 commuted sums for provision of affordable housing
Cabinet Member	Councillor Lesley Kelly
CMT Lead:	Cynthia Griffin, Group Director Culture and Communities
Report Author and contact details:	Sue Witherspoon Head of Housing and Public Protection 01708 433747 Sue.witherspoon@havering.gov.uk
Policy context:	Housing strategy
Financial summary:	To agree to use up to £932,600 of s106 commuted sums currently held for the provision of affordable housing on a council-led purchase and repair scheme with expenditure no later than 8 August 2012
Is this a Key Decision?	Yes
Is this a Strategic Decision?	Yes
When should this matter be reviewed?	Not applicable
Reviewing OSC	Towns and Communities

The subject matter of this report deals with the following Council Objectives

Clean, safe and green borough	<input type="checkbox"/>
Excellence in education and learning	<input type="checkbox"/>
Opportunities for all through economic, social and cultural activity	<input checked="" type="checkbox"/>
Value and enhance the life of every individual	<input type="checkbox"/>
High customer satisfaction and a stable council tax	<input type="checkbox"/>

The Chairman of the Towns & Communities Overview & Scrutiny Committee has agreed pursuant to paragraph 18 of the Executive Procedure Rules that this report shall be exempt from the Forward Plan procedure and call-in.

SUMMARY

This report concerns the use up to £932,600 of unallocated commuted sums taken by the Council from Barratts housing developer in lieu of on-site affordable housing provision on the former Dolphin site in Romford town centre.

A number of potential uses which could potentially meet the Council's corporate goals have been explored. The proposed approach is to use the resources to buy a number of properties on the open market and, if necessary, bring them up to the Decent Homes Standard. The properties would be held in within the Housing Revenue Account and so could then be sold to Havering families on a shared ownership basis, yielding a receipt which could be recycled by the Council for housing or regeneration purposes and/or let to households on the Council's Housing Register.

RECOMMENDATIONS

1. To agree to use up to £932,600 of unallocated commuted sums held by the Council to increase the stock of housing held by the Council for sale to Havering families on a shared ownership basis and/or for the provision of affordable housing to be let to households on the Housing Register.
2. To agree the addition of this scheme to the HRA Capital Budget, and to refer this addition to Council.
3. To delegate to the Lead Member for Housing and Lead Member for Value, acting with advice from the Head of Housing and Public Protection and Director – Finance and Commerce, the authority to decide on the number, location and type of properties acquired and the tenure with which to make them subsequently available to local people.

REPORT DETAIL

1. **Background to commuted sums**
 - 1.1 Should a residential development be of sufficient size, the developer is obligated, under section 106 of the Town and Country Planning Act 1990, to contribute towards the costs of affordable housing relating to the development.
 - 1.2 The Council's default position is that the contribution should take the form of on-site affordable housing, however, in some cases a payment in lieu of all or part of the assessed affordable housing provision is taken. Under the s106 planning agreement for the site, conditions are set regarding the use and

timescale for use of the commuted sum. The final use of the sums by the Council needs to be formally agreed by the developer.

2. The commuted sums arising from the redevelopment of the former Dolphin site in Romford

2.1 The Dolphin redevelopment in Romford was subject to a s106 agreement agreed with the developer, Barratts, which included both on-site affordable provision and a commuted sum payment.

2.2 The commuted sums were made available in two tranches; the deadlines for expenditure of both tranches are rapidly approaching. The position is summarised in the table below.

Funding source	Deadline and restrictions	Commuted sum value (including interest accrued)	Amount already allocated	Amount unallocated
s106 Dolphin scheme (1)	To be spent by 4 July 2012 To be used by the Council towards the cost of providing Affordable Housing in a manner which is reasonably related to meeting the Affordable Housing needs within the Council's administrative area, details of which shall be agreed between the Housing Provider and the Council	£926,800	£645,000	£281,800
s106 Dolphin scheme (2)	To be spent by 8 August 2012 with the same permitted use as above	£926,800	£276,000	£650,800
TOTAL		£1,853,600	£921,000	£932,600

2.3 The table shows that of the total of £1.853 million, some £921,000 has already been allocated for housing use. This leaves £932,600 unallocated. This is the subject of this report.

2.4 Of the unallocated monies, some £281,800 needs to be spent by 4 July 2012, with another £650,800 to be spent by 8 August 2012. If the amounts are not spent within these timescales, the developer would be within their rights to ask for them to be refunded. While there is a possibility that the developer will not take this course of action, any risk of losing this resources should be avoided.

Options considered for the unallocated resources

2.5 The Housing Service has been keen to maximise the corporate benefits of the commuted sums available. It should be noted that the terms of the s106 dictate that the monies must be used for affordable housing provision, thus precluding their use by another service. That said, although the developer's agreement to the Council's proposed use of the resources is required, the Council has a fair degree of freedom in directing the use of the resources.

2.6 To this end the Housing Service has explored a wide range of possible options in turn, with the options that they have potentially led to Adult Social Care efficiencies considered first. These are discussed below.

a) *Development of supported housing schemes for Adult Social Care clients to minimise residential placement*

2.7 In 2010/11, the possibility was explored of developing small supported housing schemes whereby Adult Social Care clients, principally those with a learning difficulty, could live in shared accommodation specially built and managed by a housing association.

2.8 Through discussion between Adult Social Care and housing associations, brokered by the Housing Service, it was found that it would be quicker and more cost-effective to provide for this client group through other means. Thus, the Housing Service has procured four Private Sector Leased properties for six people with mild learning difficulties, and has secured nominations to two new build properties in a housing association new build development in Romford, each accommodating two people with moderate learning difficulties requiring 24/7 care. These individuals have moved on from high cost care homes.

2.9 The Housing Service and Adult Social Care are currently assessing the feasibility of using a redundant garage site to provide a further six self-contained units for people with learning difficulties, further minimising Adult Social Care's revenue costs.

2.10 This use of the commuted sums has thus been REJECTED as other more effective options are available for meeting the needs identified by Adult Social Care.

b) *Purchase of larger properties in the housing market for conversion for use by disabled people / families identified by Adult Social Care's Occupational Therapy team*

2.11 In 2011/12, the idea of purchasing properties in the open market for larger families with a disabled member was explored with the Occupational Therapy, OT, team.

2.12 This work revealed that although the OT team is currently working with a number of disabled people needing specific accommodation, joint working with the Housing Service is able to provide suitable within the Council's own stock for these households at a lower cost than having to purchase additional units.

2.13 This use of the commuted sums has thus been REJECTED as adapting existing council properties would be a more effective way of meeting these disabled people's needs in a timely way.

c) *Amendment to the Squirrels Heath Gardens (former Snowdon Court) tenure specification*

2.14 Consideration was given to amending the tenure specification for the Squirrels Heath Gardens extra care to provide more affordable units rather than outright sale, thus potentially benefiting Adult Social Care. However, prior to start on site, the Homes and Communities Agency had already provided additional grant to 'convert' the proposed 17 outright sale units to social rent. This gives a scheme 78 affordable rented units and 20 shared ownership homes which is considered to appropriate to the borough's needs. Thus, the option of further amending the tenure was not pursued.

2.15 This use of the commuted sums has thus been REJECTED as the Squirrels Heath Gardens scheme will meet requirements without any further amendment to the tenure mix.

d) *Provide grant to a housing association to develop affordable rented properties in return for nomination rights*

2.16 Using commuted sums from one site to provide grant to a housing association to deliver affordable housing on another site in return for nomination rights can perhaps be considered the 'standard' approach. The Council has used commuted sums on occasion in the past.

2.17 It should be noted that given the options for using the resources to fund new housing of direct benefit to Adult Social Care clients have not been followed for the reasons discussed above, the possibility of using the available commuted sums to fund housing association development within the deadline for the resources' use significantly constrains the options for working with housing associations.

2.18 For this option to proceed, it would be necessary to identify a scheme which is already under development in the Borough. Given the impact of the reductions in Homes and Communities Agency (HCA) funding for affordable housing schemes there are very limited opportunities available.

2.19 In considering whether to put forward such an opportunity the Council would need to have regard to value for money as this would be an investment taking place outside of existing funding agreements between Registered Social Landlords, RSLs, and the HCA which control the financial aspects of mainstream RSL development programmes. The Council would also need to pay grant at the commencement of the scheme rather than with 50% on completion secured by a nomination agreement. This approach would also see the value of the S106 resources passed to the RSL. These factors taken together with the constraints of this S106 agreement mean that the option of using these commuted sums as a grant to an RSL has been REJECTED.

e) *Acquire properties for retention within the Housing Revenue Account for sale as shared ownership or rent*

- 2.20 With the implementation of HRA self-financing from April 2012, the option of using the commuted sums to acquire properties has just become far more attractive to the Council.
- 2.21 It has always been possible for the Council to acquire properties. Under the previous housing subsidy regime, however, as the Council was in a negative subsidy situation, that is, a proportion of its rental income had to be paid into the national subsidy pool, a proportion of the rent accruing from additional units was immediately lost to the national pool. This essentially compromised the value of using capital in this way, rendering this a questionable way forward in value-for-money terms.
- 2.22 Under the HRA self-financing system, however, there is no longer any pooling of debt and so all rental income is retained locally. Thus, the acquisition of units held in the HRA can yield additional rent to pay off debt, fund further borrowing or pay for HRA service improvements. Alternatively, should the Council raise a capital receipt from these properties, perhaps by selling some on a shared ownership basis, the capital could be recycled by the Council for housing and regeneration purposes.
- 2.23 Though perhaps similar to the housing association grant option discussed above in terms of increasing the number of affordable units available to Havering people, there are a number of distinct differences. These are:
- the total purchase price would need to be met from the commuted sums, rather than a proportion to top up private borrowing under the housing association grant option. It is worth noting that under the HRA self-financing regime, capital resources available in the HRA supported by rental income could be used to fund new housing development, but the approved HRA Business Plan does not make provision for this and this is not proposed here
 - the ongoing benefit of the commuted sums is retained by the Council in terms of (a) retention of rented stock, the rented income from which can be used to support future borrowing within the HRA, (b) capital receipts accruing from the sale of 'shares' in the properties disposed of through shared ownership, or (c) capital receipts accruing from outright disposal of the units at some future point. Any capital receipts could be used by the Council for housing or regeneration purposes
 - the Council would have far greater control over the timescale for commuted sums use; this is of vital importance given the deadlines in July and August this year.
- 2.24 Properties purchased in this way and made available on a shared ownership basis could provide a welcome first step onto the housing ladder for local people on low incomes. Alternatively, properties let for rent could prove to be attractive to under-occupying council tenants wishing to downsize and thus release a larger properties.
- 2.25 For avoidance of doubt, as the properties would be purchased without any external grant, they would **not** be subject to sub-regional nomination arrangements and thus all properties could be sold to Havering families

unable to access the housing market unaided, or if the letting option was pursued would be allocated to those on Havering Council's housing register.

- 2.26 Discussions have taken place about the feasibility of purchasing units in the timescale required. Officers are confident that the £932k unallocated commuted sums could be spent within the deadlines to purchase properties depending on the details of the portfolio acquired. The most likely options for purchase are (a) two and three bedroom houses offering good value-for-money, and/or (b) newly developed houses as they become available before the s106 commuted sums' use deadline.
- 2.27 This option for commuted sum use is PROPOSED as it afford maximum control over ensuring full spend within the s106 deadlines and will enable the Council to retain the ongoing benefit of the commuted sums' value.

IMPLICATIONS AND RISKS

3. Financial implications and risks:

- 3.1. If there were no achievable spending plans put forward there would be a real risk that the developer may not agree to an extension of the deadlines pertaining the Dolphin redevelopment s106 commuted sums' use which could deprive the Council of nearly £1m capital currently held by the authority. This paper proposes an option to manage that risk.
- 3.2. The Council may need to incur expenditure on professional support for the purchasing process. These costs can be capitalised from the commuted sums.
- 3.3. While these sums cannot be used for purposes inconsistent with the s106 agreement, that is, the monies must be used for the provision of affordable housing, there is scope for deciding on how best to apply them. The proposed approach has the distinct benefits of minimising the risk of missing the expenditure deadline and, perhaps more importantly, of retaining the value of the commuted sums in the future.
- 3.4. Rental income from the properties acquired by the Council would accrue to the HRA and could be used to fund further borrowing, repay existing debt or fund service development. The use of the resources would be subject to the member approval of future amendments to the HRA Business Plan.
- 3.5. Should the Council dispose of the properties it has purchased, perhaps on a shared ownership basis to meet local need, the resulting capital receipts could be reused by the Council for housing or regeneration purposes. The future use of any receipts would be subject to member approval.
- 3.6. This scheme, to a value of £932,600, all profiled for 2012/13, will need to be added to the HRA Capital Budget, and agreed by Council at the earliest opportunity, per Recommendation 2.

4 Legal implications and risks:

- 4.1 Should a residential development be of sufficient size, the developer is obligated, under section 106 of the Town and Country Planning Act 1990, to contribute towards the costs of affordable housing relating to the development.
- 4.2 The wording of the s106 agreement relating to the redevelopment of the Dolphin site states, in relationship to affordable housing commuted sums, *“to be used by the Council towards the cost of providing Affordable Housing in a manner which is reasonably related to meeting the Affordable Housing needs within the Council’s administrative area, details of which shall be agreed between the Housing Provider and the Council”* [being double-checked.] The use of the commuted sums proposed in this report is in line with this, although Barratts, the developer of the Dolphin site, will need to agree to the proposed use. There is therefore a risk that the developer may not readily agree to the proposed use of the funding in anticipation of then being able to reclaim it as ‘unspent’. The Council would argue that any withholding of their consent must be reasonable, that is, for a good reason, which would not include the opportunity for repayment.
- 4.3 The legal aspects of the proposed approach can either be managed in-house or, should additional capacity be required, this can be capitalised from the commuted sums.

5 Human Resources implications and risks:

- 5.1 None specifically arising from this proposal.

6 Equalities implications and risks:

- 6.1 Those looking to the Council for assistance with housing are among the most disadvantaged in the borough. As an indicator of this, some 71.74% of current council tenants are in receipt of Housing Benefit/Local Housing Allowance. Older people, parents, with young children, on low incomes and those economically disadvantaged are all over-represented among those looking to the Council for help with housing. The proposal contained in this report will increase the supply of low cost housing for rent and/or shared ownership and thus help these groups.

BACKGROUND PAPERS

None.