

North Tyneside Council

Report to Cabinet

Date: 14 May 2018

ITEM 5(b)

Title: Planning Contributions

Portfolio: **Housing and Transport**

Cabinet Member:

Councillor John Harrison

Report from Service Area:

Environment, Housing and Leisure

Responsible Officer:

Phil Scott – Head of Environment, Housing and Leisure

Tel: (0191) 643 7295

Wards affected:

All Wards

PART 1

1.1 Executive Summary:

Following adoption of the North Tyneside Local Plan in July 2017 the Authority has continued to develop and update its policy framework to ensure the infrastructure required to support the expected growth in North Tyneside is delivered. The Authority's requirements are set out in the Infrastructure Delivery Plan which describes the infrastructure that may be required in North Tyneside to support the delivery of the Local Plan to 2032.

Developer contributions are an important source of funding to support investment in infrastructure and are secured through Planning Obligations, also known as Section 106 agreements, Community Infrastructure Levy (CIL) and Section 278 highway agreements. Their use is subject to legislative controls designed to ensure they are used appropriately.

In March 2018 Cabinet adopted an update to the Authority's Planning Obligations Supplementary Obligations Document (SPD). The Planning Obligations SPD provides guidance for planning applicants in North Tyneside on the circumstances in which planning obligations might be sought from developments across a range of different infrastructure needs.

In April 2018, the Authority submitted a CIL Draft Charging Schedule to the Planning Inspectorate for examination. Should the Planning Inspectorate recommend adoption of the CIL charging schedule it will be considered by Cabinet later this year and presented for adoption to full Council. Once adopted CIL would provide a source of funding from developer contributions to support the delivery of strategic infrastructure requirements.

This report seeks to introduce new governance arrangements designed to ensure Planning Contributions are handled in an appropriate policy context and also to bring Planning Contributions in line with arrangements already in place to manage the Investment Plan.

1.2 Recommendations:

It is recommended that Cabinet:

- (1) authorise the relevant Chief Officer or Head of Service to make representations to the Head of Environment, Housing and Leisure on contributions that they consider necessary to mitigate the impact of proposed developments in line with the policy objectives of the Elected Mayor and Cabinet;
- (2) authorise the Head of Environment, Housing and Leisure, the Cabinet Member for Finance and Resources, the Deputy Mayor, other relevant Cabinet Members and the Head of Law and Governance to agree appropriate contributions for consideration by Planning Committee to mitigate the impact of proposed developments;
- (3) authorise the Head of Commissioning and Investment in consultation with the Head of Finance to commission formal site viability assessments, such cost to be met by developers, where developers challenge the level of contributions sought by the Authority under a s106 agreement;
- (4) authorise the relevant Head of Service in consultation with the Head of Environment, Housing and Leisure, the Head of Finance, the Cabinet Member for Finance and Resources, the Deputy Mayor, other relevant Cabinet Members to deliver proposed infrastructure projects; and
- (5) authorise the Head of Environment, Housing and Leisure in consultation with Head of Finance, Head of Law and Governance, the Deputy Mayor and the Cabinet Member for Finance and Resources to make any minor amendments to the process as set out in Appendix 1 as necessary.

1.3 Forward Plan:

Twenty eight days notice of this report has been given and it first appeared on the Forward Plan that was published on 12 February 2018.

1.4 Council Plan and Policy Framework

Developer contributions are a key mechanism to support delivery of the Local Plan and supporting guidance and links to achieving the following priorities of the 'Our North Tyneside' Council Plan 2018-20:

- Our people will be listened to, ready for school, for work and life, be healthy and well;
- Our places will be great places to live, offer a good choice of quality housing; provide a clean, green healthy attractive safe and sustainable environment, have an effective transport and physical infrastructure and be a thriving place of choice for visitors;
- Our economy will grow by supporting new business and building on our strengths, be business friendly, ensuring the right skills and conditions are in place to support investment.

A further range of adopted policy documents and strategies highlight key principles that should drive the Authority's approach to infrastructure delivery. The strategic context

establishes in particular commitment to sustainable growth to meet the needs of the Borough and region; enhancement of our environment; support for active lifestyles, health and wellbeing; and delivery of high quality and affordable housing:

- **The North Tyneside Local Plan 2017:** a framework for growth and development to 2032 and providing the justification for seeking developer contributions. The adoption of the Local Plan is one of the indicators of success in the 'Our North Tyneside Plan'
- **Housing Strategy 2016 to 2021 'A Great Place to Live':** setting objectives to achieve 'More and better homes', 'Great places to live', 'Better housing, better health and wellbeing', and 'Better homes, more independence'.
- **Transport Strategy 2017 to 2032 'North Tyneside on the Move':** principles for transport to 'improve health, safety, wellbeing and environmental sustainability', 'support economic growth', 'improve connectivity', 'enable smart choices for all, and 'manage demand'.
- **The Joint Strategic Needs Assessment:** highlights a range of issues and outlines health inequalities within different areas and between residents in North Tyneside.
- **Joint Health and Wellbeing Strategy:** key challenges highlight health inequalities and consideration of health and wellbeing in decision making and development processes.
- **The North East Strategic Economic Plan (SEP):** Prepared by the North Eastern Local Enterprise Partnership (LEP), the SEP establishes regional priorities for growth and will help inform investment decisions for the LEP and North East Combined Authority.
- **Authority Investment Plan:** Infrastructure needs and priorities for delivery should be aligned with current and future iterations of the Investment Plan.

1.5 Information:

Background

Understanding Infrastructure Needs

- 1.5.1 The report to Cabinet in August 2017 regarding the CIL Draft Charging Schedule and Draft Planning Obligations SPD noted that further consideration is needed to support the ongoing management of CIL and planning obligations (s106) funding. This report in response provides further consideration and identifies proposed governance arrangements.
- 1.5.2 The supporting evidence to the Local Plan includes an Infrastructure Delivery Plan (IDP). Preparation of the IDP included consultation with internal and external consultees involved in the delivery and management of local infrastructure. Infrastructure projects are identified across broad infrastructure / service areas that include:
- Affordable homes
 - Biodiversity
 - Health and Sports
 - Roads and Sustainable Transport
 - Digital Connectivity
 - Waste Collection and Disposal
 - Parks, Equipped Play, Allotments
 - Education, Employment and Training
 - Flooding and Sea Defence
 - Street Cleaning
 - Culture, Art, Public Realm and Regeneration
 - Community Services & Facilities
- 1.5.3 The infrastructure described within the IDP may be delivered via developer contributions from CIL, site specific planning obligations and Section 278 highway agreements as well

as external public and private funding opportunities that may arise to deliver specific projects in full or supplement other developer contributions.

Developer contributions

- 1.5.4 Developer contributions can be made via a number of mechanisms including CIL payments, planning obligations (s106 agreements) made pursuant to Section 106 of the Town and Country Planning Act 1990, and Section 278 agreements, made pursuant to the Highways Act 1980 and secured via conditions attached to the planning decision.
- 1.5.5 Planning obligations are specific legal agreements made between local authorities and applicants for planning permission. The use of planning obligations is subject to legislative tests which ensure that they are only used where they are necessary to make the development acceptable in planning terms, directly related to the development, and fairly and reasonably related in scale and kind. In each case, the contribution can only be sought to mitigate the impact of the development.
- 1.5.6 The Planning Obligations SPD adopted by Cabinet in March 2018 updated the previous SPD that had been in place since 2009. It provides guidance on the type and extent of the potential obligations that may be required to enable mitigation of the planning impacts of development. Planning obligations must be proportionate to the scale of development sought and can only mitigate the impacts of each planning application. Where a collection of planning applications may cumulatively result in a requirement for a particular infrastructure project, legislation is in place which limits funding being pooled from no more than five separate legal agreements.
- 1.5.7 CIL was introduced by the Planning Act 2008 and came into force through the Community Infrastructure Levy Regulations 2010. CIL is a fixed charge upon the floor area created by any development. Monies raised through CIL are pooled into a single fund to help pay for identified strategic and local infrastructure such as schools, flood mitigation, leisure facilities, highways improvements and other community facilities. These are identified in a CIL Infrastructure List (Regulation 123 List) which is published alongside CIL.
- 1.5.8 In April 2018, the Authority submitted a CIL Draft Charging Schedule to the Planning Inspectorate for examination. Should the Planning Inspectorate approve the CIL then it will come back to Cabinet for consideration and adoption by full Council later this year. Once adopted, developer contributions will be secured from all CIL liable development and contributions sought through s106 agreements.
- 1.5.9 It is proposed that prior to Planning Committee's consideration of planning applications that are recommended to be subject to a Section 106 agreement, governance processes will be introduced to enable an auditable review of proposed contributions sought.
- 1.5.10 This report seeks approval to formalise the governance process to agree contributions from developers prior to consideration of the planning application by the Planning Committee. This will ensure such contributions are aligned to the policy direction of the Mayor and Cabinet, whilst still meeting the legislative planning tests to which they are subject. The proposed process is outlined in **Appendix 1**

Development viability and negotiation

- 1.5.11 A developer may consider that the proposed level of contributions proposed by the Authority may negatively affect the viability of their development. National planning

legislation is clear that the total impact of developer contributions should not threaten the viability of the sites and scale of development identified in the development plan. National Planning Policy Framework states that “to ensure viability, the costs of any requirements likely to be applied to development, such as requirements for affordable housing or infrastructure contributions, should, when taking account of the normal cost of development and mitigation, provide competitive returns to a willing land owner and willing developer to enable the development to be deliverable”.

1.5.12 Where viability is challenged by a developer it is proposed that the Head of Commissioning and Investment commissions an independent viability assessment for consideration by the Authority. This informs negotiations between the parties and once the nature of contributions required to mitigate the impact of the development is agreed the planning application will be determined by the Planning Committee.

The proposed governance arrangements

1.5.13 Currently the Authority’s Investment Programme Board (IPB) oversees the delivery of the Authority’s capital programme once funding is established in the Authority’s Budget setting process. In accordance with the recommendations of this report it is proposed that IPB endorse the initial contributions which will be requested on behalf of the Authority.

1.5.14 If changes are requested by developers this will again be reported to IPB for endorsement. Once the nature of the contributions are agreed this will be presented to Planning Committee for determination as part of the planning application.

1.5.15 Once planning permission is agreed and the S106 agreement has been signed, the Planning Team monitor the delivery of development and request payment of planning contributions towards particular infrastructure projects from the developer when identified triggers identified in the S106 agreement are reached. This report proposes that when funding is received IPB will have oversight of the contributions and delivery of infrastructure projects. This is reflected in the proposed process within Appendix 1.

1.5.16 The proposed governance arrangements will ensure that the strategic priorities of the Mayor and Cabinet are delivered in line with the Authority’s policy requirements.

1.6 Decision options:

The following decision options are available for consideration by Cabinet:

Option 1

Agree with the recommendations as set out at paragraph 1.2 of this report.

Option 2

Decline to approve the recommendations in paragraph 1.2 of this Report and request the Head of Environment, Housing and Leisure in consultation with the Cabinet Member for Housing and Transport and the Head of Law and Governance to review the proposed delegations.

Option 1 is the recommended option.

1.7 Reasons for recommended option:

Option 1 is recommended for the following reasons:

Option 1 is recommended because introduction of the arrangements will give transparency and oversight to the affordability of sites and the level of affordable housing within the borough. This approach is in accordance with the Local Plan.

1.8 Appendices:

Appendix 1: Planning Obligations Governance Process Chart

1.9 Contact officers:

Jackie Palmer, Planning Manager (0191 643 6336)
Caroline Grist, Planning Officer (0191 643 6304)
Colin MacDonald, Senior Manager Technical and Regulatory Services (0191 643 6620)
Sarah Heslop, Manager Legal Services, tel. (0191) 643 5456
Alison Campbell, Senior Business Partner (0191) 643 7038

1.10 Background information:

The following background information has been used in the compilation of this report and is available at the office of the author:

1. [The Town and Country Planning Act, 1990](#)
2. [Planning and Compulsory Purchase Act 2004.](#)
3. [Planning Act 2008.](#)
4. [Localism Act 2011](#)
5. [Town & Country Planning \(Local Planning\)\(England\) Regulations 2012.](#)
6. [The Community Infrastructure Levy Regulations 2010 \(as amended\)](#)
7. [National Planning Policy Framework 2012](#)
8. [Planning Practice Guidance 2013 \(as amended\)](#)
9. [North Tyneside Local Plan 2017](#)
10. [North Tyneside Statement of Community Involvement 2013](#)
11. [Planning Obligations Supplementary Planning Document, March 2018](#)
12. [The North Tyneside Local Development Scheme Cabinet Report \(October 2016\)](#)
13. [Community Infrastructure Levy: Preliminary Draft Charging Schedule Cabinet \(February 2017\)](#)
14. [North Tyneside Draft Charging Schedule, August 2017](#)
15. [Infrastructure Delivery Plan, Update 2017 and Infrastructure Delivery Schedule](#)
16. [North Tyneside Area Wide Viability Assessment](#)

PART 2 – COMPLIANCE WITH PRINCIPLES OF DECISION MAKING

2.1 Finance and other resources

2.1.1 There are no financial implications arising directly from this report.

2.2 Legal

2.2.1 The legal implications that arise from this report are dealt with in the body of the report.

2.2.2 In accordance with the Authority's Constitution Planning Committee approve or reject planning applications on behalf of the Authority, save for those which are delegated to

officers. As part of the process, and in accordance with the Constitution, the Planning Committee may approve the planning application but subject to the terms of a s106 agreement.

2.2.3 Under Section 106 of the Town and Country Planning Act 1990 any commuted sums received by the Authority in lieu of affordable homes on a site are ring-fenced and held separately to fund affordable housing in the borough or to fund other legal commitments agreed as part of the section 106 agreement e.g. play site or schools provision.

2.2.4 The legal terms of the s106 agreement are negotiated and agreed by the Head of Law and Governance following the Planning Committee's decision under delegated authority.

2.3 Consultation/community engagement

2.3.1 Internal Consultation

Engagement has been undertaken with the Local Plan Steering Group (which includes the Deputy Mayor and Cabinet Member for Housing and Transport). The Planning Team have also held internal consultation with a range of officers currently engaged in collecting and spending Section 106 monies.

2.3.2 External Consultation/Engagement

The report seeks to provide appropriate internal governance to the decision making process for making recommendations to the Planning Committee and governance once financial contributions are received. Therefore no external consultation/engagement has taken place.

2.4 Human rights

There are no direct human rights implications.

2.5 Equalities and diversity

There are no direct equalities and diversity implications.

2.6 Risk management

Risks associated with the management of planning obligations funding are monitored via the Authority's Risk Management process.

2.7 Crime and disorder

There are no direct crime and disorder implications.

2.8 Environment and sustainability

There are no direct environment and sustainability implications.

PART 3 - SIGN OFF

- Deputy Chief Executive X
- Head(s) of Service X
- Mayor/Cabinet Member(s) X
- Chief Finance Officer X
- Monitoring Officer X
- Head of Corporate Strategy X