

CABINET

DATE	30 th September 2020
REPORT OF	Councillor Fenty Portfolio Holder for Regeneration, Skills and Housing
RESPONSIBLE OFFICER	Clive Tritton Interim Director of Economy and Growth
SUBJECT	Policy for spending Section 106 Affordable Housing Commuted Sums
STATUS	Open
FORWARD PLAN REF NO.	CB 07/20/03

CONTRIBUTION TO OUR AIMS

This Policy supports all Strategic Housing Strategy objectives and contributes toward the Council's aims to create sustainable communities and support the Health & Wellbeing of residents. This enables the development of well designed, warm, economic homes, where people feel safe and are safe. Increased development, which support the Council's housing delivery programme, increases income from Council tax and contributes toward New Affordable Homes bonus figures and develops more opportunities for local residents to learn construction skills and enter this sector for employment.

EXECUTIVE SUMMARY

The policy document establishes the process by which the Council will operate going forward when spending s.106 Affordable Housing Commuted Sums that are received from Housing Developers as part of their Planning Obligations: accepted as an exception on developments which are deemed not suitable for onsite delivery of s.106 Affordable Housing built units.

RECOMMENDATIONS

It is recommended that:

1. Cabinet approve the Policy for the spending of s.106 Affordable Housing Commuted Sums.
2. Cabinet delegates responsibility to the Director of Economy and Growth to approve Enabling Viability Grant funding proposals, in consultation with the Portfolio Holder for Regeneration, Skills and Housing.

REASONS FOR DECISION

The highest identified Housing need in North East Lincolnshire is for Rented Social Housing, with more than 3000 households on the Council's Housing Register at any given time. However, this is the most challenging tenure to deliver, with financial challenges specific to low rental value areas.

The viability of developing social housing can be very challenging and the reality is that Affordable Housing Commuted Sum funds are sometimes required to bridge the

gap between market value of a property being built/offered to a registered housing provider and price the registered housing provider is permitted to pay for a property.

Offering a Viability Enabling Grant (money from s.106 commuted sums) is a key incentive offered to encourage new investment in Rented Social Housing stock in North East Lincolnshire. The Local Authority has had four Preferred Partners over several years but, due to recent year on year rent reductions for social housing providers and subsequent stock rationalisation by all Registered Providers, one has withdrawn their commitment to investing in new stock development in North East Lincolnshire.

1. BACKGROUND AND ISSUES

1.1 This policy highlights the process for spending s.106 Affordable Housing Commuted Sums.

1.2 State Aid implications have been considered and this Policy provides evidence of a transparent and compliant approach to spending which meets the requirements of State Aid whilst also taking into account the requirements for Affordable Housing outlined in the National Planning Policy Framework (NPPF) and in the Local Plan.

1.3 The Policy also supports the Government's 5-year commitment to delivering more Rented Social Housing to meet a National housing need and reduce Homelessness.

1.4 S.106 Commuted Sums for Affordable Housing are secured in a legal planning agreement, s.106 Agreement. To enable the delivery of Affordable Housing within North East Lincolnshire, they include.

- Phased payments based on the practical completion of a fixed number of units, which varies according to the number of houses being delivered on the whole site.
- There is a spending deadline imposed on the Council and included in the s.106 Agreement. If not met the Commuted Sum must be repaid to the Developer, with interest.
- Few s.106 Affordable Housing Commuted Sums are agreed and, as payments are reliant on sales rates on a development, payments are relatively small, ad hoc, and must be spent before deadline.
- The irregularity of the stream of payments and restrictions on spending does not support forward planning.

1.5 Over time it has been established that providing a grant to Registered Providers of Rented Social Housing to bridge the development viability gap is:

- a Best Value for Money approach to spending the s.106 Affordable Housing Commuted Sum money,
- a process which is compliant with National and Local Policy, enabling the delivery of Affordable Housing which would not be delivered without the support of additional grant funding from the Council.

- 1.6 The amount of grant provided per unit varies according to the need of individual schemes and Council service need. Since 2013, Council grants have enabled the delivery of 114 Affordable Housing units.
- 1.7 If Council officers are aware of opportunities to deliver Affordable Housing then, with the approval of the developer, they will ensure that all potential schemes are brought to the attention of eligible providers of Affordable Housing who are operating in the area and have contacted the Council asking to be sent such updates.

2. RISKS AND OPPORTUNITIES

- 2.1 This policy enables the spending of s.106 Affordable Housing Commuted Sums in line with the restrictions and requirements set out in the NPPF and Affordable Housing guidance and addresses the risk of repaying unspent Council Planning Gains to developers if spending deadlines are not met.
- 2.2 Providing grant support to Rented Social Housing development, in a low value area with challenging viability, will enable Registered Providers operating in North East Lincolnshire to deliver additional Affordable Housing, and support efforts to attract new Registered Provider investment in the area.
- 2.3 Utilising s.106 sums to encourage rented social housing development in low value /challenging and/or uneconomical sites will improve neighbourhoods and quality of life for residents.

3. OTHER OPTIONS CONSIDERED

- 3.1 **Do nothing by not providing a Viability Enabling Grant** would result in Rented Social Housing being unviable to develop, as there is no other incentive to support existing Registered Providers or attract new Registered Providers to invest in our financially challenging area. This would encourage an ad hoc spending with no set purpose. This would risk losing Council Planning Gains as unspent Commuted Sum money would be repaid to developers.
- 3.2 **Using s.106 Affordable Housing to purchase individual dwellings**, new build or renovation, does not secure an equivalent number of additional Affordable Housing units and may not achieve value for money but may deliver regeneration and social benefits to a neighbourhood. In the event that the time for payment of money back to the developer is close and no scheme is in place then it may then be the option pursued by the Council.

4. REPUTATION AND COMMUNICATIONS CONSIDERATIONS

- 4.1 The Policy will have a positive impact on the Council's reputation as it demonstrates to Registered Provider partners active support for the delivery of housing to address local housing need.
- 4.2 Supporting Affordable Housing delivery with grant funding improves the housing offer for residents and provides housing of a type for which there is a high unmet need.

4.3 Approval also evidences Council support for the Housing Strategy, and delivery of those aims.

5. FINANCIAL CONSIDERATIONS

5.1 The NELC Enabling Viability Grant Scheme is self-financing through Council Planning Gains received under Planning Policy, which are ring fenced to enable the delivery of Affordable Housing in North East Lincolnshire.

5.2 There is no requirement for additional Capital funding, and this policy does not call on Council reserves.

5.3 Support from Council grants will enable the delivery of dwellings which would not be delivered or brought back into use: Rented Social Housing delivery generates additional Council Tax, counts toward the Council's annual delivery figures, cumulative New Homes Bonus and New Affordable Homes Bonus - an additional £350 premium per unit.

6. CLIMATE CHANGE AND ENVIRONMENTAL IMPLICATIONS

Rented Social Housing development meets or exceeds modern building standards required on new build dwellings. Registered Providers are encouraged to adopt new and innovative methods of construction, and heating etc. which reduce emissions and impact on the environment, often acting as a lead for the private housing market.

7. CONSULTATION WITH SCRUTINY

This report has been to Economy Scrutiny and has been agreed in consultation with the Portfolio Holder for Housing.

8. FINANCIAL IMPLICATIONS

The effective utilisation of s.106 sums for affordable housing can help enable the delivery of affordable housing in the area. Additional housing also comes with additional council tax revenues as well as additional responsibilities for providing council services.

9. LEGAL IMPLICATIONS

Planning obligations under Section s.106 of the Town and Country Planning Act 1990 (as amended), commonly known as s.106 agreements, are a mechanism which make a development proposal acceptable in planning terms. They are generally focused on site specific mitigation of the impact of development.

s.106 contributions can be flexibly used for a range of matters including the securing of affordable housing, specifying the type and timing of this housing; and to secure financial contributions to provide infrastructure.

10. HUMAN RESOURCES IMPLICATIONS

There are no direct HR implications contained within this report.

11. WARD IMPLICATIONS

The Policy will be effective Borough wide and may impact on all Wards.

12. BACKGROUND PAPERS

None

13. CONTACT OFFICER(S)

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COUNCILLOR JOHN FENTY

**DEPUTY LEADER AND PORTFOLIO HOLDER FOR
REGENERATION, SKILLS, AND HOUSING**



Affordable Housing: Spending of Section 106 Affordable Housing Committed Sum

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Introduction and Context

To achieve the Council's vision of a 'Stronger economy and stronger communities' we need to work innovatively with partners in the public and private sectors, the voluntary and community sector, and with individuals, families and communities. We must support and enable the achievement of improved community outcomes being bold, creative and efficient.

We want North East Lincolnshire to be seen as an attractive place to live, work, visit and invest. We know that we have significant potential and exciting opportunities for investment and growth in North East Lincolnshire.

The Council's stronger economy / stronger communities priorities are underpinned by a key strategic framework comprising the following:

- health and wellbeing strategy
- economic strategy
- prevention and early intervention strategy
- financial strategy
- safeguarding



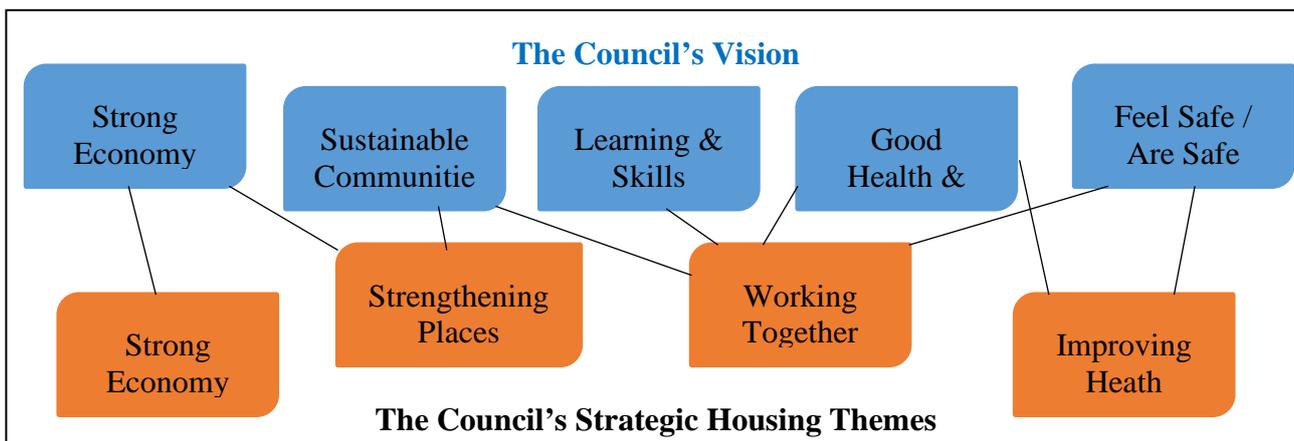
NELC's [outcomes framework](#) is the means by which our priorities will be translated into action and delivered, developed and achieved in conjunction with our partners across sectors. This is intended to drive a culture of evidence-based decision-making that will enable elected members to take informed key decisions, knowing the risks and the opportunities for citizens, communities and businesses. Our commissioning plan will ensure and foster clear links between the outcomes framework and the resources available to achieve them.

The framework, sets out the five high level outcomes that we and our partners aspire to achieve to ensure prosperity and wellbeing for the residents of North East Lincolnshire.

The five outcomes are that all people in North East Lincolnshire will:

- Enjoy and benefit from a strong economy
- Feel safe and are safe
- Enjoy good health and well being
- Benefit from sustainable communities
- Fulfil their potential through skills and learning

This policy contributes to the five elements of the Council Vision by supporting to the Council's four Strategic Housing themes.



This policy has considered the aims of the Equality Duty, including ensuring that no-one is treated disproportionately or in any way less favourably on the grounds of age, disability, gender reassignment, pregnancy & maternity, race, religion or belief, sex, sexual orientation or marriage & civil partnership.

The National Planning Policy Framework determines the Planning contributions required on a development, and these are secured through legislation and legal agreements. Affordable Housing contributions are secured in an s.106 agreement. The Local Plan sets out the local s.106 Affordable Housing requirements based on viability by post code area. S.106 Affordable Housing contributions assist the local authority in meeting the aims of the Housing Strategy - *“Increase delivery of new and improved Affordable and Specialist housing, through working effectively with Registered Providers, Homes England and others. Provide effective support to households facing accommodation issues or homelessness.”*

It is expected that developers will provide their Affordable Housing contribution ‘on site’ – that is, they will offer an agreed percentage of the houses built on the site to a Private Registered Provider of Social Housing (housing association) at a price that enables them to provide the property at a Social / Affordable rent, or as a low cost home ownership opportunity. Where this is not possible, usually because the properties are not of a certain type, configuration, location or price that the housing association are able to utilise, then an agreed/calculated sum of money will be transferred to the Council instead. This is known as an s.106 Affordable Housing Commuted Sum and can only be invested by the Council to enable the provision of Affordable Housing within the Borough.

The value of the s106 Affordable Housing Commuted Sum is determined and calculated by deducting the Social Value (the price that a Registered Provider would reasonable pay for the property taking into account their restrictive regulated borrowing) from the Market Value of the property. The difference between the two is the s.106 Affordable Housing Commuted Sum value.

1. Aims of the s.106 Affordable Housing Commuted Sum Policy:

The aims of the Policy are to evaluate requests for funding against the criteria set by the Council; to make best use of the funds to meet Local Housing Need; to achieve best value

for money; to be innovative in the use of the limited funds available. The Council's Strategic Housing Strategy and Local Plan clearly identify the unmet need for Rented Affordable Housing across the Borough.

This document sets out a clear policy for the purpose, use, management and approval for spending s.106 Affordable Housing Commuted Sums. A robust, compliant, consistent and transparent approach for allocating and spending the designated funds: meeting the requirements of State Aid regulations under Services of General Economic Interest (SGEI).

S.106 Affordable Housing Commuted Sums are accepted in exceptional circumstances, when there is a planning requirement for provision of Affordable Housing on a site and the development is unsuitable, unviable or unsustainable for Social Housing residents: as assessed and identified by the NELC Affordable Housing Lead Officer. S.106 Affordable Housing Commuted Sums are accepted in exceptional circumstances where the reason can be robustly justified; examples of such justification could include:

- Sites which are a significant distance from services, schools, and public transport which could make the location unsuitable for Social Tenants: particularly relevant to some semi-rural areas.
- Sites with high service charges which would make the ongoing cost of the property unaffordable for social tenants: particularly relevant to sites which have high grounds and road maintenance costs, apartment blocks, gated communities etc.
- Units in blocks of flats, especially where social flats are mixed with private market flats, as this can cause management issues.

This payment is accepted in lieu of the building and sale of Affordable Housing to a Private Registered Provider of Social Housing, by a developer on a specific site.

The s.106 Affordable Housing Commuted Sum is secured through a defined legal agreement known as a Section 106 Agreement which includes trigger points, including the stage of the development when cash sums will be paid to the Council, and spending deadlines. This Policy will ensure the Council fulfils its duty and ensure the s.106 Affordable Housing Commuted Sums are spent according to the requirements set out in the relevant s.106 Agreements and Government regulations. If sums remain unspent after an agreed period, normally 10 years, these have to be repaid back to the developer with interest.

The Council is required to hold Section 106 Affordable Housing Commuted Sums in an account ring-fenced for the purpose of enabling the delivery of Affordable Housing within North East Lincolnshire. The funding is made available to help Housing Associations, or other providers of Social Housing by enabling the viability of the purchasing or providing additional Rented Affordable Housing in perpetuity.

The s.106 Affordable Housing Commuted Sum funding will be awarded in the form of an 'Enabling Grant' to the Provider by North East Lincolnshire Council. The decision-making criteria is set out below.

All types of scheme can be submitted for consideration for an Enabling Grant and will be

assessed against the criteria outlined in this document, must comply with all s.106 regulations and s.106 agreements and planning policy. For example:

- Schemes which require additional grant funding to enable the viability of delivering a Provider's own New Build Scheme; bridging a shortfall when the organisations' own borrowing and Homes England grant does not fully fund the development
- Off the Shelf purchase of New build properties; bridging a shortfall when the organisations' own borrowing and Homes England grant does not fully fund the purchase cost.
- A grant required to support and make viable the acquisition and renovation of private market Empty Homes to be provided as Rented Affordable Housing in perpetuity.
- A grant to support the purchase of land and the development of Rented Affordable Housing on that land – subject to planning permission.

2. Criteria for qualifying for an Enabling Grant:

In order to be considered for the allocation of funding from the s.106 Affordable Housing Commuted Sum pot, the Private Registered Provider of Social Housing or other approved housing organisation (for the purposes of this document 'the Provider') will submit their proposal to the Council's Lead Officer for Affordable Housing for consideration, and should the application should clearly demonstrate that:

- Homes England funding has been sought from the Affordable Housing Program, or other appropriate funding applied for
- The scheme will meet Homes England Affordable Housing standards.
- A grant from the s.106 Affordable Housing Commuted Sum pot would enable the delivery of the scheme; and that the scheme would not be deliverable without s.106 Affordable Housing Commuted Sum funding
- The scheme will provide additional Rented Affordable Housing to meet housing needs identified by the Council's Strategic Housing department.
- The property is not acquired through an s.106 Agreement.
- The property is not, nor has previously been, a Social Housing property.

If an older property is acquired for renovation it must be made clear which elements of the purchase and renovation the grant funding is being used to contribute toward the provision of the Rented Affordable Housing; and must ensure that all aspects are compliant with the regulations and s.106 agreements governing the use of the s.106 Affordable Housing Commuted Sum and future use of a Rented Affordable Housing property.

3. How requests for funding will be made:

1. Having met the criteria set out in section 2 of the policy, the Provider will request an Enabling Grant from the Council's Lead Officer for Affordable Housing who will provide an application form.
2. The Council will require evidence of the viability issue to justify the amount of Enabling Grant requested, only, as the applicant's financial position will have undergone rigorous examination when applying to Homes England for Grant Funding. The Enabling Grant application form lists the information required:
 - amount of Provider's capital investment or borrowing,

- all sources of funding the Provider has received, specifically to support the development, hopes to receive or will be making an application for, and the perceived likely outcomes of this,
- long term business plan of the Provider relating to the scheme/properties.

4. How requests for Enabling Grant Funding will be considered:

1. The Affordable Housing Officer will assess the request for an Enabling Grant against the agreed criteria listed in Section 3 of this policy and authorisation will be required by the Assistant Director for Housing, with sanction from the Portfolio Holder for Housing.
2. The PROVIDER must demonstrate that they have pursued other forms of funding before requesting that Council funds be invested, and that the investment of those funds will not reduce the proportion or availability to access other public subsidy available.
3. All of the information detailing the site, number and type of units to be provided, including Affordable Housing units, other sources of funding approached and outcomes, or predicted likely outcomes, of this scheme will be provided to the Affordable Housing Officer.
4. Affordable Housing Lead Officer will make a recommendation to release the funding, in line with internal appraisal requirements.
5. The request for an s.106 Enabling Grant will be approved by the Assistant Director for Housing under delegated authority up to the £500,000 limit set in SGEI State Aid regulation and agreed within this Policy
6. Following approval the PROVIDER will be required to enter into a Grant Funding Agreement with the Council. Funding will be released in line with the conditions in the Grant Funding Agreement.

5. Other considerations:

1. An open book assessment of the financial plan must be taken by all parties involved, to ensure an open and transparent approach.
2. Where there is more than one application for the Enabling Grant, and all applications meet the criteria in section 3, priority will be given to the application providing best value and bringing the highest benefit to the district, determined by NELC, for example;
 - Scheme's which offer best value for money by clearly demonstrating that they have maximised all other suitable funding sources.
 - Schemes which deliver the type of dwelling identified as a high demand property in short supply, according to Home Choice Lincs,
3. All units will be Rented Affordable Housing and need to be in line with the Council's relevant descriptions and paragraphs regarding the definition of Rented Affordable Housing in the NELC s.106 agreement template, and will be let through the council's choice based lettings scheme (Home Choice Lincs) or through other suitable nominations processes as agreed by NELC.

6. How requests for funding will be confirmed:

1. The Affordable Housing Officer will inform the applicants of the final decision in writing.
2. The PROVIDER and the Council will enter into a legal agreement to secure the Enabling Grant.

7. Monitoring and Evaluation

The monitoring process for the spending of the s.106 Affordable Housing Commuted Sum pot is:

- Payments are received by Planning (ENGIE) who inform the Lead Officer for Affordable Housing that there has been a payment into the s.106 Affordable Housing account.
- The Lead Officer for Affordable Housing informs Planning (ENGIE) of any spending against that account to enable monitoring.
- The Assistant Director of Housing will authorise spending from the s.106 Affordable Housing Commuted Sum account by Officer Decision up to £500,000, in consultation with the Portfolio Holder for Housing, and recorded in an Officer Decision Record (ODR)
- The s.106 Affordable Housing Commuted Sum account is reviewed and audited annually by NELC Finance

BACKGROUND INFORMATION

Document Purpose	Policy
Author	Amanda Waldron
Last Review and Publication Date	20.08.2020
Target Audience	All stakeholders
Subject	S.106 Affordable Housing Commuted Sum
Reference and Version	NELC AH. 1
For Further Copies Email	amanda.waldron@nelincs.gov.uk
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Impact Assessment (inc E&D) done?	No
Name of Lead Officer undertaking Assessments	Amanda Waldron
IA Action Plan with Recommendations Produced	N/A

Document History

Date	Amendments made	By Whom (name/job title)	Stakeholders Approval (Name, Job title / Organisation)
01.08.19	New Policy (informal)	A Waldron Affordable Housing Lead Officer	
20.08.20	Revised Policy (formal)	TBC	TBC

