

## Report for Resolution

**Report to** Executive  
27 May 2009.

**Report of** Assistant Director City Development

**Subject** Response to Consultation- Planning Obligations- A  
Framework for Prioritisation

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### Purpose

This report provides feedback on the consultation which was carried out on the draft Framework for Prioritisation on Planning Obligations. At the meeting on 4 February 2009, members agreed to consult on a Framework which set out a process for dealing with the exceptional situations where the normal package of developer contributions sought through the planning process would make a scheme unviable

### Recommendations

That the Executive:-

- (1) endorses the proposed changes in response to representations made during the consultation on the Framework for Prioritisation set out in the table in Appendix 1
- (2) approves the Planning Obligations – A Framework for Prioritisation set out in Appendix 2 for use exceptional situations where the normal package of developer contributions sought through the planning process would make a scheme unviable
- (3) agrees that appropriate training/ briefing for planning committee members takes place
- (4) Agrees to review the Framework, once economic circumstances improve

### Financial Consequences

The financial consequences of this report are that in exceptional circumstances (and in order to allow important development and regeneration to go ahead in the current economic climate) development proposals may be approved with a reduced level of developer contributions where schemes are proven to be unviable.

### Risk Assessment

- 1) The detailed options and associated risks were considered in the Executive Report on 4 February 2009. The main risk to the Council relates to the certainty of securing funding in future where payments may be deferred Strategic Priority and Outcome/Service Priorities

The report helps to meet the strategic priority “Strong and prosperous city – working to improve quality of life for residents, visitors and those who work in the city now and in the future”.

**Executive Member:** Councillor Morrey - Sustainable City Development

**Ward:** All

**Contact Officers**

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**Background Documents**

## Report

1. On 4 February 2009 Executive agreed a draft Framework for Prioritisation in relation to Planning Obligations sought under the Town and Country Planning Act 1990. The Framework aims to provide guidance in circumstances where the full list of planning obligations may result in a scheme being unviable. This seems more likely in the current economic climate.
2. Consultation has been carried out with a range of developers, agents and neighbouring local authorities. The responses received are summarised in Appendix 1 together with the suggested amendments to the Draft Framework in the light of comments received. Key changes are:
  - Simplification and clarification of the criteria for prioritisation
  - Clarification about advice needed for Planning Applications Committee in decision making
  - Consideration of options of deferred contributions where this might be preferable to reduced payments.
  - Extending the time period for reassessment of scheme viability where development does not commence immediately following grant of planning permission.
  - Clarification about confidentiality
3. The proposed approach accords with government advice. The Chief Planning Officer and Department of Communities and Local Government has recently written to all local authorities about planning in the recession and points out that “now more than ever it is important to help authorities to ensure existing planning permissions are built out. Ultimately, section 106 agreements are contractual agreements between developers and local authorities to deliver what is necessary to make a development acceptable in order to obtain planning consent. Where they are asked to do so, local planning authorities should be carefully reviewing whether obligations agreed through section 106 accord with the five principles set out in B5 of planning circular 05/05. “
4. CLG is also undertaking a work programme to maximise the effectiveness of section 106 planning obligation negotiations by sharing knowledge and best practice. This includes working with the Homes and Communities Agency to explore the development of a toolkit for use by local planning authorities to predict the affordable housing contribution that can be supported through section 106 in a local authority or housing market area.
5. A revised Framework for prioritisation is set out in Appendix 2. It is proposed that this be approved and used as a basis for decision making by Planning Applications Committee. It is proposed to brief and provide some further training for members of Planning Applications Committee on the new procedures. The use of the Framework will need to be reviewed once economic circumstances improve.

## **Appendix 1.** **Response to consultation on Planning Obligations Framework for** **Prioritisation.**

(Attached)

## **Appendix 2.** **Planning Obligations- A Framework for Prioritisation.**

### **A) Criteria for determining priorities for Developer Contributions** **(In event of a development proposal being proven to be unviable)**

The following criteria provide a framework (for use by Planning Applications Committee when determining individual planning applications) for ranking requirements for developer contributions which may be covered by planning conditions, s.106 agreements or planning obligations. The Framework is based on attributing a ranking of requirements based on the following categories, listed in priority order.

1. **Site Specific Critical Requirements** – even if a scheme is unviable, planning permission cannot be granted if these elements are required but lacking.

*Note- if these items can be funded by other means they would become Category 4.*

- Where the requirement is a vital component or integral part of the scheme E.g. on/off-site highway improvements
  - Where implementation can only happen as part of development e.g. riverside walk
  - Requirements which provide a “once and for all opportunity” e.g. bridges
  - Where the ability to provide the requirement is lost once the site is developed e.g. restoration of historic buildings as part of the scheme
2. **Essential policy requirements**– Development should not normally be granted planning permission unless there are exceptional benefits in terms of regeneration. The normal list of Policy Requirements (below)
    - General transportation contributions/enhancements
    - Affordable housing
    - Education
    - Libraries
    - Play/open space
    - Way finding/signs
    - Heritage interpretation

- Shop mobility

These will be ranked according to the following criteria. Higher priority will be given to requirements where there is:

- A site specific requirement identified in a Local Plan policy or a SPD e.g. community provision in the North City Centre Area Action Plan
- Evidence of need or existing deficiency in provision e.g. is the development in a sector of the City deficient in open space provision; is there a high level of affordable housing already in this part of the City?
- The requirements cannot be met through contributions from other developments or other funding sources

3. **Other related requirements** – these would usually be scheme specific benefits, which are beneficial, but are not a policy requirement and could potentially be capable of being financed by other means (as in Circular 5/05)

### **Assessment Process.**

The process will also take account of:

#### ***Deferred payments***

As part of the open book process an assessment of the scope to defer payments and achieve full contributions at a later stage in the development will be made. This needs to be balanced against the risk of not securing contributions.

#### ***On site provision v commuted sums***

The on site requirements will be considered against the potential to secure commuted payments in lieu.

#### ***The costs of projects to meet identified needs:***

The costs of addressing specific needs and meeting identified requirements should be assessed. This is important to ensure that the contributions secured are capable of delivering worthwhile benefits.

*Note: it is not intended to compromise the quality of design of development proposals.*

### **B) S.106 –Process for Negotiations.**

1. Case officer draws up comprehensive list of s.106/related requirements (in accordance with Circular 5/05) (which impose a cost on development) at “informal” or pre planning application stage. This list should include those requirements secured on behalf of other agencies e.g. education and library contributions for Norfolk County Council (in accordance with County Council standards and protocol)
2. Case officer refines list as a result of discussions with development team to coordinate corporate input
3. In the event that:
  - the developer claims the scheme will not be viable if the full list of planning

- obligations is to be provided **and**
- where it is considered that the development may be needed to meet the aims of the development plan, the City Council instructs an independent valuation expert, such as the District Valuer to undertake an “open book” appraisal of the scheme to verify the viability of the full scheme including all s.106 requirements. This should be based on residual valuation methodology and for housing schemes should be based on the Homes and Communities Agency model. Costs of this work to be met by the developer. The results of the appraisal will be shared with the developer but the detail will remain confidential and summarised in any report to planning applications committee
4. The appraisal process will include:
    - An assessment of all costs and values based on **current** prices (at the time of the appraisal) and may not therefore reflect the actual price that the developer has paid for the site)
    - advice from the valuation expert on a reasonable level of profit which is acceptable from the development in the light of development risks, which may require private housing to be dealt with separately from affordable housing e.g. 18-20% (on capital value) and affordable housing (6% of cost.)
    - clarification about the level of developer contributions which can be met from the development and allow the scheme to be economically viable, including the impact of deferred payments
  5. Following receipt of appraisal report and understanding of the viability of the scheme, case officer prioritises list of s.106 requirements according to the criteria in the framework to determine whether or not it is appropriate to recommend approval for the scheme without the full requirements being met. The appraisal report will be shared with the developer/applicant.
  6. Corporate officer discussion to reach agreement about priorities in particular to:
    - Determine the proportion of the needs arising from the development that can be delivered through potential commuted sums and
    - Ensure that any commuted sums will also be capable of delivering worthwhile community benefits (through identifying works that will be delivered, costs involved and other sources of funding).
    - (Note: Norfolk County Council and ward councillors should be included in the consultation process)
  7. Negotiate with developer to secure requirements in priority order according to overall level of contribution that can be provided on the basis of economic assessment of whole scheme
  8. Report to Planning Applications Committee (which should be prepared in consultation with the Portfolio holder for Sustainable City Development) to include:
    - An explanation of the exceptional circumstances and how the proposal will meet the needs of the development plan, in order to justify a recommendation of approval with reduced s.106 requirements. This principle

should be established first before any consideration of the relative priorities that should be given to specific planning contributions

- The recommendations about planning obligations priorities based on an assessment of needs the costs of identified improvement works or provision of new facilities and the ability of the development to contribute to meeting these. This should set out the implications of accepting reduced contributions, including those collected on behalf of the County Council.
  - The timeframe that the viability assessment remains valid, if the scheme does not commence immediately. This will normally be 18 months after planning permission is granted or a longer time to be agreed with the local planning authority where it is agreed that there has been no change in market conditions.
  - Consideration of deferred payments to secure the full level of contributions at a later stage in the development
  - Consideration of an “overage” clause to allow Council to “clawback” funding in the event of developer achieving larger profit than anticipated at the time of the appraisal. The overage clause would be capped to a maximum based on the balance of contributions the site is liable for after deduction of any contribution already made.
9. The detailed information in the appraisal will remain confidential (shared only with the developer/applicant and where relevant other agencies such as Norfolk County Council, where contributions are secured on their behalf).

## Appendix 1: Consultation on Section 106 Prioritisation Framework

### Summary of Responses

REF	Date	Respondent	Key points	Action / comments
1.	19.3.09	John Ingram, Ingram Homes, 38 Barnham Broom Rd, Wymondham, Norfolk NR18 0DF	<ul style="list-style-type: none"> <li>• Favours abandoning planning obligations contributions entirely</li> <li>• Views prioritisation framework as a stimulus package</li> <li>• Concern over additional bureaucracy</li> </ul>	<p>Framework deals with the application of existing policy in line with Circular 5/05 Noted</p> <p>Framework to be simplified- not intended to introduce further bureaucracy</p>
2.	23.3.09	Paul Smith, Cotman Housing Ass., Bowthorpe Hall, Bowthorpe Hall Rd, Norwich NR5 9AD	<ul style="list-style-type: none"> <li>• Concern over refusals because of a failure to provide 'once and for all' planning gain. Feels this will lead to the opportunity in question not being taken, so neither party will benefit</li> <li>• Relaxing local plan requirements could impact on design quality</li> <li>• Overage clause might be linked to phasing of development, so that future contributions remain linked to site rather than merely providing an offsite contribution</li> <li>• DV cost should be borne by council</li> </ul>	<p>- Clarification of criteria make clear that development cannot be approved without meeting these specific requirements</p> <p>- The Framework does not affect design quality standards- there is no intention that these should be relaxed- clarified accordingly. Framework allows for this kind of flexibility</p> <p>Cost of appraisal is not considered to be onerous in relation to the overall level of developer contributions. The requirement for the cost to be covered by the developer is</p>

				considered to be reasonable if a relaxation in the normal level of contributions is sought.
3.	27.3.09	Andrew Savage, Broadland Housing Ass, NCFC, Jarrold Stand, Carrow Rd, Norwich NR1 1HU	Concern over viability of 100% affordable developments, would seek some concessions to be made for these	Affordable housing still places demands on play space, education, transportation services etc. The level of affordable grant may impact on the other contributions which can be made. The appraisal will take account of all costs associated with the development.
4.	30 March 09	MW Blake, Owen Bond, Queens House, Queens Rd, Norwich NR1 3PL	<ul style="list-style-type: none"> <li>• Concern over transparency re. where s106 is spent</li> <li>• Seeks to know whether overage might be paid back from Council to developer if value of a development continues to fall</li> </ul>	<p>Decisions about expenditure are dealt with via Executive so are in the public domain</p> <p>Overage will be paid on completion of development and will not be paid back if values continue to fall. This is consistent with circumstances where the full level of contributions are secured and additional contributions are not sought if values increase and contributions are not paid back if values fall. The Council only seeks up to the normal maximum level of contributions.</p>
5.	30.03.09	Martin Swinley, Bidwells, 16 Upper King Street, Norwich NR3 1HA	- Making the Council aware of its valuation services and the appraisals it could undertake to determine the viability of schemes	Noted- Council needs to use an independent valuation expert
6.	31 March 2009	Roger Burroughs, Spatial and Community Planning Manager, Broadland District Council, Thorpe Lodge,	<ul style="list-style-type: none"> <li>• Need for clarification of definitions and distinction between categories</li> <li>• Need for clarification about the fact that the elements on the list will depend on nature and location of proposed development</li> <li>• Need for transparency in any related</li> </ul>	<p>Categories are proposed to be amended and simplified.</p> <p>Clarification that this will form part of the prioritisation process</p> <p>Clarification proposed in relation to the decision</p>

		Yarmouth Road, Norwich NR7 0DU	<p>committee report</p> <ul style="list-style-type: none"> <li>• Concern that a reduced commuted payment would not provide for same level as provision a full on-site contribution. Concern that contributions should not be sought in areas where there is no local deficiency</li> <li>• Need to allow developer to challenge the need for any of the requirements as part of open book process</li> </ul>	<p>making process Clarification that this will form part of the prioritisation process</p> <p>This will be part of the assessment process This is proposed to be clarified.</p>
7.	3 April 09	Simon CW Bryan, Development Director, Hopkins Homes Ltd, Melton Park House, Melton, Woodbridge, Suffolk, IP12 1TJ	<ul style="list-style-type: none"> <li>• General- welcome framework- need to ensure issues with review and practical application.</li> <li>• Some confusion about the land value used at the time of the assessment and impact on development starting on site</li> <li>• Method for determining reasonable level of profit needs to be flexible as developers base this on different criteria</li> <li>• Timeframe of 1 year for reappraisal is too short</li> <li>• Any reappraisal needs to be before site completion</li> <li>• May be other circumstances where policy requirements would be relaxed</li> <li>• Claw back should only be if profit is at more than 10% higher than original assessment</li> <li>• Should allow for an “underage” clause ie a further reduction</li> <li>• Cap on increase in contributions need to be based on the original assessment not</li> </ul>	<p>Noted</p> <p>Land value will be assessed at the time the appraisal is made.</p> <p>This will be flexible and based on the advice of the independent valuation expert.</p> <p>Proposed to extend the time period to 18 months or longer if there has been no change in market conditions Proposed to reappraise on completion- see comment Framework is to deal with relaxation in relation to scheme viability Any additional profit would make further contributions available and the maximum level is the normal level of contributions. If contributions reduced further the Council would be unlikely to have granted planning permission.</p>

			<p>any changes as a result of variation in policy etc</p> <ul style="list-style-type: none"> <li>• Need for certainty</li> <li>• Concerns if principles apply to on-site contributions as well as commuted sums:</li> <li>• May require a fresh planning application which would impose an additional burden on a developer</li> <li>• May affect design of scheme</li> <li>• Will affect people who have purchased property and could lead to compensation</li> </ul>	<p>Yes- cap is based on normal level of contributions sought at the time planning permission was granted. Certainty is the normal level of contributions. This Framework allows for flexibility in exceptional circumstances Not intended to result in fresh planning application being required</p> <p>Design quality standards will not be relaxed- clarified accordingly</p> <p>Overage clause will be responsibility of developer on completion- not subsequent occupiers of property</p>
8.	06/04/09	Terry Fuller, Regional Director Homes and Communities Agency (by e-mail)	Suggest using conditions rather than s.106 and introduce phased payments throughout the development	<p>Conditions are already used in preference to legal agreements/obligations where possible but it is not appropriate to do so in all cases, especially where there is a financial element to the developer requirement. In any event, the mechanism to assess priorities would be the same even if the delivery mechanism is different.</p> <p>Option of deferred payments now included. Phased payments are only likely to be appropriate in large developments.</p>
9.	02/04/09	Steve Faulkner, Norfolk County Council (by e-mail)	<ul style="list-style-type: none"> <li>• Acknowledge need for guidance</li> <li>• Need to refer to new County Council standards and protocol</li> <li>• Suggest combining priority 1 and 2</li> </ul>	<p>Noted Added to Framework</p> <p>Criteria have been simplified- involves 3 rather</p>

			<ul style="list-style-type: none"> <li>• Need to refer to County Council obligations</li> <li>• Suggest new Grouping into 4 priority groups</li> <li>• Need to ensure appropriate refs to Circular 5/05</li> <li>• Need to reference other County Council contributions as well as education</li> <li>• Recommend consultation with County Council before recommendations made (this worked well in the case of Anglia Square)</li> <li>• Planning applications committee report needs to spell out implications of reduced contributions and discussion with other service providers e.g. County Council</li> <li>• Need to refer to how any overage monies may be spent</li> </ul> <ul style="list-style-type: none"> <li>• Acknowledge need for confidentiality but may need to demonstrate how a scheme is unviable to service providers- this would be consistent with County Planning Obligations Standards</li> </ul>	<p>than 4 categories Added to Framework Criteria have been simplified- involves 3 rather than 4 categories Added to Framework</p> <p>Amended accordingly</p> <p>Amended accordingly</p> <p>Amended accordingly</p> <p>Overage money will make up the shortfall in contributions. The priorities will be determined based on assessment at the time the overage moneys are calculated ( as circumstances may have changed).</p> <p>Amended accordingly</p>
10.	20.4.09	John Clements Broads Authority Dragonfly House 2 Gilders Way Norwich	No objections raised	Noted

11.	20.4.09	NR3 1UB Alec Hartley The Norwich Society The Assembly House Theatre St Norwich NR2 1RQ	<ul style="list-style-type: none"> <li>• Response argues for a public art contribution through s106</li> </ul>	Framework deals with existing policy requirements- not introducing new requirements
12.	20.4.2009	Joseph Saunders Estate Development Director University of East Anglia Norwich NR4 7TJ	<ul style="list-style-type: none"> <li>• Raises concern that the proposal would result in increased contributions and that this could impact on the continued development of Norwich's Knowledge Economy</li> <li>• Suggests that a process for review of policy implementation should be added</li> </ul>	<p>The Framework is proposing reduced contributions- not new or additional contributions or new policy</p> <p>Framework is not proposing new policy</p>
13.	17.4.09	Alan Preslee Bidwells, 16 Upper King St, Norwich, NR3 1HA	<ul style="list-style-type: none"> <li>• Generally supportive of a review of approach to s106 contributions</li> <li>• Consider prioritisation framework as proposed to be too complex and inflexible – suggest two-tier essential / non-essential requirements are considered instead</li> <li>• Would welcome a flexible approach, responsive to needs of specific sites</li> <li>• Consider proposed overage clause to be a potential disincentive to development due to potential future s106 contributions</li> <li>• Supportive of independent valuation of a proposal</li> </ul>	<p>Noted</p> <p>Framework proposed to be simplified into 3 rather than 4 categories</p> <p>The Framework proposes a consistent approach which allows flexibility for taking site specific considerations into account Overage clause is an optional consideration</p> <p>Noted</p>