

EAST AYRSHIRE COUNCIL

CABINET –23 JUNE 2010

DEVELOPER CONTRIBUTIONS FUND AND DEVELOPER CONTRIBUTIONS SPORTS, LEISURE AND RECREATION FUND

Report by Depute Chief Executive/ Executive Director of Neighbourhood Services

1 PURPOSE OF REPORT

1.1 The purposes of this report are to :

- (i) Summarise the current budgetary position for the Developer Contributions Fund (DCF) and the Developer Contributions Sports, Leisure and Recreation Fund (DCSLRF);
- (ii) Recommend amendment to the accounting mechanisms for holding the funds and for their disbursement;
- (iii) Recommend opportunities for some of the currently available funds to be used to support eligible projects within the Council's Capital Programme and issues in relation to Moscow Community Hall; and
- (iv) Recommend additional governance arrangements for decision making in relation to the approval of grant funding from the Developers Contributions.

2 PLANNING POLICY BACKGROUND

2.1 The East Ayrshire Local Plan was adopted in 2003. Policy TLR5 indicated that the Council would request all potential developers of residential sites comprising four or more houses to enter into a S75 Agreement with the Authority to make voluntary contributions towards the provision of appropriate leisure and recreation facilities within the area to which the development related. The specific projects agreed by the Development Services Committee on 5 June 2001 as being the beneficiaries of such funding contributions were :

- A new indoor swimming pool in Cumnock;
- A competition sized sports hall in Kilmarnock ; and
- Good quality playing fields in Kilmarnock and Stewarton

- 2.2 In practice however, not all developers agreed to contribute funds for the projects identified in the Local Plan. Many preferred that their contributions be used to meet the needs of the community in which they were proposing to build. On this basis therefore, funds were gathered and ring-fenced for a wide range of projects throughout most of East Ayrshire's communities. All of the contributions received however, were on a voluntary basis.
- 2.3 The Alteration to the East Ayrshire Local Plan Finalised Draft with Modifications (February 2009) proposes a new Developer Contributions Policy (Policy RES 29), which will make it a **mandatory** requirement for all potential developers of residential sites comprising four or more houses to make an appropriate financial and/or non-financial contribution towards the provision of any new or expanded facilities, amenities or associated community initiatives as may be required to meet the needs of any future populations introduced to the area as a result of the proposed development itself. Supplementary Planning Guidance on Developer Contributions has been published and this specifies the level of contributions which would be sought from eligible development proposals within the Investment Corridors and the projects that the contributions would support.
- 2.4 However, a number of formal objections to the Alteration to the East Ayrshire Local Plan Finalised Draft with Modifications have been lodged and have recently been examined by a Scottish Government Reporter. The Solicitor to the Council advises that until such time as the outcome of that examination is known, voluntary contributions under Policy TLR5 should continue to be sought.

3 THE EXISTING DEVELOPER CONTRIBUTIONS FUNDS

- 3.1 Since the inception of the policies on Developers Contributions, some developers have elected to make voluntary contributions under Policy TLR5, whilst other contributions under this policy have been received through the contractual commitments of formal Planning Agreements (Section 69 and Section 75 Agreements).
- 3.2 Voluntary contributions made under Policy TLR5 were allocated to the DCF and in many cases, specified a particular geography or named projects, as the beneficiary of the contribution.
- 3.3 Contractual contributions made under Policy TLR5 were allocated to the DC SLRF, on the basis of the Planning Agreement specifying, as appropriate, the beneficiaries of particular projects, identified geographies or eligible projects within the area to which the development relates.
- 3.4 The geographical areas to which the developments relate was based on the previous Local Planning Committee areas of :
- Northern Local Planning Committee;
 - Central Local Planning Committee; and
 - Southern Local Planning Committee.

- 3.5** In addition to allocations by specific Committee decisions, funds are being used to support eligible community led projects and are distributed to appropriate leisure and recreation projects in accordance with Policy TLR5.
- 3.6** All applications for funding are assessed by officers and the views of Elected Members on the proposed projects are sought, with approval being determined jointly between the Head of Leisure Services and the Head of Planning and Economic Development.

4 SUMMARY OF CURRENT FUNDING POSITION

- 4.1** The available funding position, as at 31st March, 2010 is summarised in the attached table. Information is presented separately for the DCF and the DCSLRF and also for an amalgamation of both Funds.
- 4.2** The following broad caveats should be noted :
- (i) Where developers have indicated that in principle they are prepared to make a voluntary contribution, but consideration of the planning application has not progressed to a stage of detailed discussion on the amount of a contribution, no figures have been included in the “funds due” column;
 - (ii) Where Planning agreements have been concluded but incorporate provision that payment is not due until a specified landmark time (e.g. granting of completion certificates), the relevant sums, where these have been determined, are included in the “funds due” column, but not in the “funds received” column;
 - (iii) Planning Agreements are a burden on land and in cases where the developers with whom the Agreement was concluded have gone into liquidation, or where the ownership of the land has been transferred, the obligations of the Agreement will normally pass to any new landowner, although there inevitably may be a considerable time delay in the contributions being collected.

5 PROPOSALS TO SIMPLIFY THE ACCOUNTING ARRANGEMENTS FOR THE FUNDS

- 5.1** The Council has reviewed the Planning Committees and has reduced them to two committees, by the amalgamation of the former Northern and Central Planning Committees into one new Northern Local Planning Committee.
- 5.2** It would therefore be appropriate to reflect this in the amalgamation of Developer Contribution funds into the same two area funds – i.e. :
- Northern Local Planning Committee Area; and
 - Southern Local Planning Committee Area.

- 5.3 The proposal to amalgamate the funds would have to respect any legal agreement or condition that relates to a particular contribution. Therefore, it will be necessary to conclude funding applications where there are existing commitments, provisional allocations or ring-fencing on the existing basis of the three funds.
- 5.4 The distinction between the DCF and the DCSLRF is no longer relevant and therefore, in accounting terms, the funds should be amalgamated into one single Developer Contributions Fund for each of the two geographical areas.
- 5.5 Where voluntary contributions are currently being sought in terms of the advice from the Solicitor to the Council (noted at paragraph 2.3), agreed contributions would be committed to either the Fund for the new Northern Local Planning Committee Area or the Southern Local Planning Committee Area.

6 OPPORTUNITIES TO USE EXISTING FUNDS TO SUPPORT ELIGIBLE PROJECTS WITHIN THE CAPITAL PROGRAMME AND ISSUES RELATED TO MOSCOW COMMUNITY HALL

- 6.1 This section of the report details where funds were ingathered to support specific projects, but which have subsequently been realised by the Leisure Services through earlier Capital Programmes. Further details of these projects are outlined below:-

(i) Ref 05/0967/RM – development by Drumbow Homes at Jamieson Road, Darvel

A payment of £50,000 was made to the Developer Contribution Fund towards the provision of play equipment within the public open space adjacent to Hutchison Drive, Darvel in lieu of the developer providing suitable facilities in open space within the development site.

Leisure Services implemented the works at Hutchison Drive, funded through the Capital Programme in 2006, at a cost of £49,469.25.

Following discussion with Leisure Services, it was agreed that £31,919.33 of the Developer Contribution could be used to support the cost of the Darvel Skateboard project.

The balance of £18,080.67 of the original contributions remains and should be utilised to support further play area upgrades in Darvel, which will align with the developer's requirements in making the contribution.

(ii) Ref 06/0970/FL – development by Barratt West of Scotland at Belvedere View, Galston

In 2008, the developer paid a contribution totalling £40,000 to the Council which comprised £10,000 for general play area upgrades in Galston and £30,000 for the upgrading of the Burnawn Place Play area in Galston.

The play area at Burnawn Place was upgraded by Leisure Services, as a Capital Programme project in November 2007, at a cost of £21,455.25.

It is recommended therefore that the £21,455.25 from the £30,000, be transferred from Developer Contributions to the Capital Programme and in order to meet the spirit of the contribution, should be used to support further play area upgrades in Galston.

The remaining balance of that contribution amounting to £8,544.75 and the other contribution of £10,000 should remain in the Developer Contributions Fund and be ring-fenced to support further play areas provision in Galston.

(iii) Ref 04/1138FL – development by John Henry Homes Ltd at Bridgend, Stewarton

A Developer Contribution of £31,000.00 was received towards the provision and maintenance of play equipment at the existing recreational areas at Robertland, Stewarton, which Leisure Services upgraded in 2007 at a cost of £48,324.25.

Leisure Services has indicated that investment to upgrade an alternative Play Park is required and therefore, it is recommended that the £31,000, be transferred from Developer Contributions to the Capital Programme. This would meet the spirit of the contribution made by the developer and would allow Leisure Services to bid for additional funds to support further play area upgrades in Stewarton.

6.2 Ref – 03/1054/FL – development by James Cuthbert of former Moscow Leisure Centre

The developer agreed a Developer Contribution of £13,309 under the terms of a S75 agreement, which specified that the funds were to be held in an interest bearing account for 5 years and be ring fenced to support the Moscow Community Hall Project. The 5 year period expired in December 2009 and therefore the funds (plus accrued interest of £1,053) have been transferred into the appropriate Developer Contributions Fund.

The community group continues to actively pursue the development of the project and therefore, it is important that the group can have the continuing confidence that the funds remain available for the project. Accordingly, it is proposed that the sum of £14,362 (£13,309 capital + £1,053 interest) be ring fenced to support this project.

7 PROPOSED REVISION TO GOVERNANCE ARRANGEMENTS FOR THE DEVELOPER CONTRIBUTIONS FUNDS

- 7.1** The current administrative arrangements are that the Head of Leisure and the Head of Planning and Economic Development jointly authorise the approval of applications for project funding, following detailed assessment by officers and consultation with local Elected Members.
- 7.2** It is proposed that the governance arrangements for expenditure from the Developer Contribution Budgets should be reviewed to reflect the principles applied to the Match Fund budget, under the Council's Scheme of Delegation.
- 7.3** It is proposed that, following appropriate assessment of the project applications, determination of grants of up to and including £15,000 should be by two out of four of the Depute Chief Executive/Executive Director of Neighbourhood Services, the Head of Planning and Economic Development, the Head of Leisure and the Business Development and Tourism Manager. Applications for grant funding in excess of £15,000 would be referred to Cabinet for determination.

8. LEGAL IMPLICATIONS

- 8.1** Any proposal to utilise monies paid to the Council in terms of Policy TLR5 of the Adopted East Ayrshire Local Plan will require to support sport, leisure and recreation projects in the Capital Programme in a manner considered appropriate, having regard to the terms of the agreement which gave rise to the payment to the Council, in order to minimise any potential challenge.

9. FINANCIAL IMPLICATIONS

- 9.1** Implementation of the recommendations in this report will contribute to the funds available to the Council, to meet the requirements of the Capital Programme.

10. COMMUNITY PLANNING AND POLICY IMPLICATIONS

- 10.1** Projects supported through the Developer Contributions Funds will contribute directly to the achievement of the objectives of the East Ayrshire Community Plan.

11. RISK MANAGEMENT AND PERSONNEL IMPLICATIONS

- 11.1** There are no risk management or personnel implications.

12. RECOMMENDATIONS

12.1 That the Cabinet :

- (i) approves the establishment of only two area based Developer Contribution Funds, reflecting the new Planning Committee areas of the :
 - Northern Local Planning Committee; and
 - Southern Local Planning Committee
- (ii) approves the amalgamation of the separate Developers Contributions Fund and the Developer Contributions Sports, Leisure and Recreation into a single fund for each Planning Committee area, with unallocated balances being made available to support both relevant strategic projects in the Capital Programme and eligible community led sports, leisure and recreation projects;
- (iii) approves the future use of funds in the Developer Contributions Fund, in accordance with Section 6 of this report;
- (iv) approves that in relation to the negotiation of future voluntary Developers Contributions under Policy TLR5, relevant applicants be invited to contribute to the new fund covering the Northern Local Planning Committee area or the Southern Local Planning Committee area and that the funds so in gathered be made available to support eligible Sports, Leisure and Recreation projects identified in the Capital Programme in the first instance and, if not so required, to support eligible community led sports, leisure and recreation projects within the area.
- (v) approves the revised governance arrangements proposed at Section 7 of this report; and
- (vi) recommends to Council, the revision of the Scheme of Delegation to incorporate the recommended revised governance arrangements.

ELIZABETH MORTON

Depute Chief Executive / Executive Director of Neighbourhood Services

7 June 2010: DAH/JRS
FV-AN

BACKGROUND PAPERS

Development Services Committee 5 June 2001 : Report on Setting up of Community Fund

For further information please contact ALAN NEISH, Head of Planning and Economic Development at Council Offices, Croft Street, Kilmarnock on (57) 6767.

Implementation Officer : DAVID HEWET

DEVELOPER CONTRIBUTIONS FUND SUMMARY AS AT 31 MARCH 2010								
Area	Funds Due To Date	Funds Received To Date	Awards Issued	Funds Committed	Funds Provisionally Allocated	*Balance of Funds Ringfenced to a Specific Project or Settlement in accordance with Planning or other Agreement	**Balance of Funds Ringfenced to Area Funds in Accordance with Planning or Other Agreements	***Balance of Funds Allocated To Area Funds In Accordance With Development Promotion Advice Note 11
(A) Developer Contributions Fund								
Northern LPC	456,710.00	406,710.00	209,835.33	19,500.00	36,400.00	99,774.67	36,300.00	4,900.00
Central LPC	132,100.00	132,100.00	46,000.00	20,000.00	43,600.00	22,000.00	0.00	500.00
Southern LPC	67,264.00	69,714.00	17,823.65	0.00	7,800.00	15,450.00	5,500.00	23,140.35
Total	656,074.00	608,524.00	273,658.98	39,500.00	87,800.00	137,224.67	41,800.00	28,540.35
(B) Developer Contributions SLR Fund								
Northern LPC	163,757.00	146,124.00	42,362.91	0.00	300.00	45,362.00	37,499.09	20,600.00
Central LPC	416,495.96	221,251.32	129,888.35	35,000.00	35,056.65	0.00	21,306.32	0.00
Southern LPC	278,239.00	134,472.00	90,122.00	35,100.00	0.00	4,100.00	5,150.00	0.00
Total	858,491.96	501,847.32	262,373.26	70,100.00	35,356.65	49,462.00	63,955.41	20,600.00
(C) Developer Contributions Combined Funds								
Northern LPC	620,467.00	552,834.00	252,198.24	19,500.00	36,700.00	145,136.67	73,799.09	25,500.00
Central LPC	548,595.96	353,351.32	175,888.35	55,000.00	78,656.65	22,000.00	21,306.32	500.00
Southern LPC	345,503.00	204,186.00	107,945.65	35,100.00	7,800.00	19,550.00	10,650.00	23,140.35
Grand Totals	1,514,565.96	1,110,371.32	536,032.24	109,600.00	123,156.65	186,686.67	105,755.41	49,140.35
<p>PLEASE NOTE (1): *These balances of funds are unallocated but are ringfenced to a specific project or settlement and therefore groups with eligible projects within these settlements may apply. **These balances of funds are unallocated but are ringfenced to the Area Funds in accordance with Planning or other agreements. Groups with eligible projects within these Area Funds may apply. *** These balances of funds are unallocated and groups with eligible projects may apply to their relevant Area Fund. PLEASE NOTE (2): In addition to the above a Developer Contribution amounting to £322,500 has been secured for the Tesco development in Kilmarnock. This contribution is not considered in this Cabinet report as the funds are not available to support sports, leisure and recreation projects.</p>								