

# **EAST AYRSHIRE COUNCIL**

## **DEVELOPMENT SERVICES COMMITTEE - 22 AUGUST 2006**

### **DEVELOPER CONTRIBUTIONS / PLANNING GAIN LEGAL IMPLICATIONS**

#### **Report by Executive Director of Development and Property Services**

#### **1. PURPOSE OF REPORT**

- 1.1** To inform the Council of the legal status of Developer Contributions and to describe the processes that will be undertaken to maximise planning gain through the incorporation of detailed developer contributions / planning gain policies in the finalised version of the Alteration of the East Ayrshire Local Plan.

#### **2. BACKGROUND INFORMATION**

- 2.1** A report on Local Plan Developer Contributions was presented to the 12 October 2005 meeting of the Development Services Committee, the Committee agreeing at that meeting to the range and type of services and facilities for which developer contributions will be requested and also agreeing to the creation of a Development Contributions Officer post. The Developer Contributions Post is currently being advertised. The Committee also authorised the Head of Planning, Development and Building Standards to undertake the necessary surveys, studies and assessments to identify development impacts on services and facilities as part of the local plan alteration process and to investigate the role that could be played by the Council in the provision of infrastructure. In this regard, a number of studies have been undertaken. These were:

- (i) ongoing dialogue with Scottish Water to determine the extent of existing and potential infrastructure constraints throughout the East Ayrshire settlements;
- (ii) an affordable housing study, commissioned by the Head of Homes, to identify those communities where there is a recognised need for affordable housing to be provided;
- (iii) a landscape assessment of potential development area around the main East Ayrshire settlements, to identify those areas capable of accommodating future growth in landscape terms;
- (iv) an urban capacity study to identify those brownfield sites located in existing settlements which are considered capable of future redevelopment; and
- (v) the application of a sportScotland facilities model, commissioned by the Council's Head of Leisure, to establish any current deficits in sports provision throughout the East Ayrshire communities.

## **2.2** Other studies currently being considered for possible implementation include

- (i) an open space survey, to be undertaken jointly between the Departments of Development and Property Services and Neighbourhood Services;
- (ii) a study into the establishment of a green network within and between communities, under the auspices of the Ayrshire Joint Structure Plan Committee; and
- (iii) a facilities survey to be carried out on a settlement by settlement basis.

**2.3** It is considered that the implementation of the above studies will play an important part in ascertaining particular community facility or service infrastructure deficits which are, or are likely to be, experienced throughout the area settlements. These studies will also be instrumental in the identification of particular facility and service improvements to which developer contributions can be directed. It is intended that those particular service facilities and infrastructure deficits to which developer contributions will be directed will be identified in the finalised version of the local plan alteration, with the assistance and full involvement of the new Development Contributions Officer.

**2.4** An essential pre-requisite to the establishment of a sustainable Developer Contributions policy is to ascertain the legal status and defensibility of the contributions process and to determine whether contributions can be made compulsory or whether they should be voluntary in nature. An investigation into the legal implications of implementing the recommendations of the Development Services Committee Report of the 13 October 2006 has recently been carried out by the Solicitor to the Council and the results of this study are detailed below.

## **3. CONCLUSIONS OF THE SOLICITOR TO THE COUNCIL'S INVESTIGATION**

**3.1** The Solicitor to the Council carried out an in-depth investigation into the subject of planning gain and developer contributions based on the publication 'Scottish Planning Law and Procedure' by Jeremy Rowan-Robinson and others, specific case histories and current practice by other Scottish Authorities that operate a developer contributions policy, namely Aberdeenshire Council.

**3.2** The investigation concluded that the introduction of a developer contributions policy in the Council's Local Plan is an essential part of the process of requiring developer contributions to be lodged with the Council, the inclusion of such a policy in the plan making it a material consideration which has to be taken into account when determining a planning application. The concept of requiring developer contributions to be lodged with the Council in respect of certain developments is highlighted in the recently approved Alteration to the East Ayrshire Local Plan. However, no detailed settlement specific development contributions policies have been formulated within the document. It is considered that such policies would best be formulated in collaboration with the Council's new Development Contributions Officer, once the position has been filled, following full consultation with local communities and negotiation with potential developers and following approval of the draft East Ayrshire Local Plan Alteration which has identified and introduced, for the first time in the plan preparation process, a series of potential new sites for development. It should be noted that, if the local plan

makes developer contributions explicit on a settlement by settlement basis, the requirement for developer contributions to be made for the specific purposes detailed in the plan will become a material consideration in the determination of future planning applications relating to the particular development concerned. Any applications which do not comply with these requirements will be considered contrary to the provisions of the local plan.

- 3.3** The conclusions which can be drawn from the various sources referred to is that developer contributions can indeed be made compulsory, so long as the level of contribution expected is reasonable and relates directly to the policy as stated in the local authority's local plan. This has been made clear in the wording of the general developer contribution policy which is already incorporated in the draft local plan alteration.

#### **4. FINANCIAL IMPLICATIONS**

- 4.1** Any costs to be incurred by the Department as a direct result of approving this report and formulating appropriate settlement based development contributions policies for incorporation in the East Ayrshire Local Plan Alteration can be accommodated within existing budgets. The costs involved in the appointment of the Development Contributions officer have also been accommodated within existing budgets but it is considered that future costs should be met from any developer contributions received. There may be financial implications for the Council's Legal Section and further consideration will be given to this issue.

#### **5. LEGAL IMPLICATIONS**

- 5.1** By linking developer contributions directly to policies contained in the local plan and by making such contributions compulsory, it is likely that the number of formal Section 75 Agreements will increase. This will result in a corresponding increase in workload for employees in both the Council's Planning, Development and Building Standards Division and the offices of the Solicitor to the Council. There may also be legal challenge to making developer contributions compulsory during the local plan adoption process which may have legal implications for the Council.

#### **6. POLICY IMPLICATIONS**

- 6.1** Adoption of the recommendations incorporated in this report will have implications for the development of planning policy for the finalised draft of the East Ayrshire Local Plan Alteration and in particular those policies dealing with developer contributions on a settlement by settlement basis.

#### **7. COMMUNITY PLAN IMPLICATIONS**

- 7.1** There are no direct implications for the Community Plan as a result of implementing this report.

## **8. RECOMMENDATIONS**

**8.1** It is recommended that the Committee agrees:

- (i) to authorise the Head of Planning, Development and Building Standards, in full consultation with the Developer Contributions Officer to be appointed, to prepare a set of general and settlement specific developer contributions policies for inclusion in the finalised version of the local plan alteration to be produced; and
- (ii) to note the contents of the report and in particular that planning applications for sites identified in any finalised or adopted local plan will not conform to the plan unless general and any related specific developer contribution policies are fulfilled.

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**Executive Director of Development and Property Services**  
**JL/JL -**  
**28 July 2006**

### **LIST OF BACKGROUND PAPERS**

- (i) Report by the Executive Director of Development and Property Services to the 13 October 2005 meeting of the Development Services Committee entitled 'East Ayrshire Local Plan: Developer Contributions'.
- (ii) Memorandum from the Solicitor to the Council to the Executive Director of Development and Property Services dated 21 April 2006 and entitled 'Developer Contributions / Planning Gain: Legal Implications of Report to Development Services Committee: 13 October 2005'.

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