

# EAST AYRSHIRE COUNCIL

## DEVELOPMENT SERVICES COMMITTEE - 14 DECEMBER 2004

### PLANNING GAIN / DEVELOPER CONTRIBUTIONS

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

#### 1. PURPOSE OF REPORT

- 1.1 To seek Committee authorisation to reassess the opportunities for Planning Gain as an integral part of the ongoing review of the East Ayrshire Local Plan.

#### 2. BACKGROUND INFORMATION

- 2.1 The planning system provides for developers, as an integral part of the development process, to provide or contribute towards the provision of infrastructure and services in order to enhance the quality of development and enable proposals to go ahead which might otherwise be refused. This planning gain is particularly appropriate where, for example, existing infrastructure and services are inadequate to meet the demands of new development and where developer contributions can help provide the necessary services or infrastructure to make the development viable.

- 2.2 Planning Gain obtained through this process is invariably effected through the expeditious use of Section 75 Agreements under the Town and Country Planning (Scotland) Act 1997 and the provisions of Scottish Office Development Department Circular 12/1996. Under this legislation, Local Planning Authorities may enter into an agreement with any person interested in land for the purpose of restricting or regulating the development or use of the land, either permanently or during such period as may be prescribed by the agreement. Planning agreements negotiated in terms of Section 75 of the Act should:

- serve a planning purpose;
- be related to the development being proposed;
- be related in scale and kind to the proposed development; and
- be subject to the test of reasonableness.

- 2.3 In addition to the above, Section 75 of the Act also allows agreements to contain such financial provisions as appear to the Planning Authority to be necessary or expedient for the purposes of the agreement.

- 2.4 As stated in Circular 12/1996, the Scottish Ministers consider that development plans should give guidance on the particular circumstances in which planning authorities will seek to use agreements, in order:

- to provide an opportunity for local communities and the development industry to comment on the particular circumstances detailed; and
- to enable developers to anticipate the financial implications of their development projects;

### **3. CURRENT COUNCIL PRACTICE REGARDING PLANNING GAIN AND DEVELOPER CONTRIBUTIONS**

3.1 Section 75 Agreements are widely employed by the Council, particularly to help achieve the highest quality of development through the promotion of measures that cannot adequately be addressed through planning conditions attached to an issued planning consent. These currently include provision of open space, developer contributions to the Minerals Trust Fund and in respect of sports or leisure facilities.

### **4. POSSIBLE FUTURE EXPANSION OF LOCAL PLAN PLANNING GAIN / DEVELOPER CONTRIBUTION POLICY**

4.1 Given that the review of the Local Plan will provide developers with new development opportunities there exists a basis for extracting significant planning gains. It is considered imperative that, wherever possible, developers should continue to contribute to the provision of new, or the upgrading of existing, infrastructure, services and facilities to meet the needs of their new developments. Discussion with other authorities has indicated that improvements could be made, both to increase the levels of developer contributions received and to expand the range of infrastructure, services and facilities that could benefit from those contributions. These measures could include:

- making developer contributions compulsory rather than voluntary, where possible and feasible;
- expanding the range of infrastructure, services and facilities that could benefit from developer contribution funding to include the provision of affordable housing, additional education and healthcare facilities, and improvements to travel and transport.
- expanding the types of development from which contributions could possibly be sought, including, for example, retail, industrial and business developments etc.

4.2 It is considered that expansion, alteration and clarification of the Council's adopted policies relating to developer contributions and planning gain would best be effected through the current ongoing alteration to the East Ayrshire Local Plan.

### **5. POSSIBLE IMPLICATIONS OF THE EXPANSION OF DEVELOPER CONTRIBUTIONS**

5.1 Under Section 75 of the Town and Country Planning (Scotland) Act, developer contributions can only be sought to overcome shortfalls or deficiencies in infrastructure, service and facility provision brought about or caused by the development itself. Contributions cannot be targeted to overcome infrastructure, service and facility deficiencies which already exist. In addition, contributions should be targeted to the particular area in which the development is proposed.

5.2 In order to properly direct developer contributions to overcome identified deficiencies in infrastructure, services and facilities, it will be necessary for the Council to identify the level of provision of current infrastructure, services and facilities in each of the area settlements. This will be an essential prerequisite in assessing the impact, at a local or strategic level, that any new development will have on the provision of infrastructure, services or facilities. It will, of course, be necessary to assess the particular levels of contribution that may be required to meet the particular impacts identified, if appropriate, on a site by site or settlement by settlement basis. It will also be necessary to ensure that these impacts are incorporated into the local plan as a matter of policy and regularly updated.

5.3 Implementation of this local plan policy could have financial and manpower implications for the Council at a future date, should the suggested approach eventually be included in any adopted alteration to the local plan. It is, however, considered likely that any costs of implementing an expanded Planning Gain / Developer Contribution Policy will be greatly exceeded by the levels of contributions that will accrue to the Council as a result of the policy being adopted.

## **6. FINANCIAL IMPLICATIONS**

6.1 There are no financial implications for the Council as a direct result of this report

## **7. LEGAL / AUTHORITY IMPLICATIONS**

7.1 There are no legal / authority implications for the Council as a direct result of this report

## **8. PERSONNEL IMPLICATIONS**

8.1 There are no personnel implications for the Council as a direct result of this report.

## **9. RECOMMENDATIONS**

9.1 It is recommended that the Committee:

- (i) authorise the Head of Planning, Development and Building Standards to expand the opportunities for planning gain along the lines outlined in Section 4 of this report, as an integral part of the Alteration of the East Ayrshire Local Plan; and
- (ii) authorise the Head of Planning, Development and Building Standards to separately report back to Committee on how best to implement any revised policies; and
- (iii) otherwise note the contents of the report.

**James Lavery**  
**Executive Director of Development and Property Services**  
**26 November 2004**  
**FV**

## **LIST OF BACKGROUND PAPERS**

Nil

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