

EAST AYRSHIRE COUNCIL
KILMARNOCK NORTH LOCAL COMMITTEE
31 JANUARY 2006
DEVELOPERS FINANCIAL CONTRIBUTIONS

Report by the Head of Planning, Development and Building Standards

1. PURPOSE OF REPORT

1.1 The purpose of this report is to advise the Local Committee on proposals the Council has to enforce local developers to make a financial contribution to provide new facilities under the planning application system.

2 THE BACKGROUND TO CONTRIBUTIONS BY DEVELOPERS

2.1 The Council will, subject to the necessary finance being available, improve and enhance the provision of leisure, recreational and sporting facilities in Kilmarnock, area settlements and the rural area. It currently does so under the terms of policy TLR5 of the adopted East Ayrshire Local Plan. This indicates that developers of sites comprising four or more houses will be requested to enter into a legal agreement with the Council to make a contribution towards the provision of appropriate leisure and recreational facilities within the area to which the development relates.

2.2 A report agreed by the Development Services Committee on 05 June 2001 outlined the process whereby developers would make such contributions, emphasizing at that time that the voluntary contributions were to address deficiencies in the provision of sports, leisure and recreation facilities identified in the Local Plan.

2.3 The report confirmed that contributions would be placed within funds established for each local planning committee area where they would be allocated towards projects meeting the identified deficiencies in those three areas. Thereafter it would be appropriate to review the provision and identify new priorities. The agreed mechanism for this was a contribution based on 1% of the construction costs of the houses being built.

3. REVIEW OF DEVELOPER CONTRIBUTIONS

3.1 A report on developer Contributions / Planning Gain was considered by the Development Services Committee in December 2004 which agreed that the opportunities for expanding the Council's policies and procedures in relation to these matters should be examined. Subsequently on 12 October 2005 that same Committee agreed a further report on Developer Contributions which acknowledged Scottish Executive guidance that Local Plans should give clear guidance on the circumstances when planning authorities will seek to use planning agreements and that such agreements can reasonably secure facilities and address impacts arising from specific developments.

3.2 Developer contributions, it is stressed, should only be used to address the impacts arising from a development. Where several developments have a combined local consequence, then contributions from those developers could be pooled to resolve the issue. The 12 October 2005 report offered examples of the kind of facilities that might receive contributions, including sports facilities, water and sewerage facilities, schools and transportation.

3.3 The 12 October 2005 report also agreed in principle the creation of a Developer Contribution Officer post to negotiate and monitor contributions secured under any alteration to the local plan.

4 ENFORCING DEVELOPERS TO MAKE A CONTRIBUTION

4.1 From the above it can be seen that there is a distinction between the current basis for seeking voluntary contributions from developers and that being considered for introduction through alterations to the local plan. Proposed revisions to the Local Plan could enshrine the principle that where a development has impacts which could not be resolved by conditions particular to the site itself, then a legal agreement ought to be required to address the issues. The implication of this is that without resolution of those impacts, the development should not proceed.

4.2 The contributions sought from developers under the current Local Plan are of a different nature, being voluntary and seeking to address known identified deficiencies in local facilities.

5 CONCLUSIONS

5.1 Council policy is currently to request voluntary contributions in accordance with Policy TRL5. For that reason, where a developer is disinclined to contribute, the application must be determined on its merits without giving weight to the developer's refusal to contribute. Accordingly, it is not possible to oblige developers to make contributions but where an agreement has been voluntarily signed prior to issue of the consent, failure to subsequently comply with that agreement would place the developer in

breach of contract and liable to the Council recovering the debt through all civil remedies available to it.

5.2 Under a regime such as that proposed in the 12 October 2005 report to the Development Services Committee, the reasons for pursuing contributions would of necessity have to satisfy the tests laid down by Government, but in essence contributions could only be sought to address the impacts of the development concerned that were not capable of being resolved by conditions. Contributions could be secured by Legal Agreement and failure to deliver on the Agreement would leave the developer in breach of contract and again subject to the remedies available to the Council.

6 RECOMMENDATION

6.1 It is recommended that the Committee note the contents of the report.

Alan Neish
Head of Planning, Development and Building Standards

16 January 2006

(DVM/RH)
FV/DVM

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LIST OF BACKGROUND PAPERS

1. 05 June 2001. Report to Development Services Committee – Sport, Leisure and Recreation Fund.
2. April 2003. Adopted East Ayrshire Local Plan
3. 14 December 2004. report to Development Services Committee – Planning Gain / Developer Contributions

Anyone wishing to inspect the above paper should please contact Dave Morris, Development Promotion Manager, on 01563 576753.

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