

Decision Number: 09 – 2023/24

## Portfolio Holder Executive Decision Statement

### The Local Authority (Executive Arrangements)(Meetings and Access to Information)(England) Regulations 2012

Subject: use of S106 affordable housing contributions to secure Counsel's opinion

Details of Decision taken: approval to use S106 affordable housing contributions to secure Counsel's opinion

#### Reason for Decision

There are emerging concerns relating to development finance gaps arising on certain affordable housing schemes, notably 100% affordable and rural exception housing schemes, which jeopardise the delivery of new homes.

Independent viability testing demonstrates if a scheme is in deficit (ie where a development finance gap exists). A development finance gap renders a scheme unviable, meaning the scheme is unlikely to be developed and the new affordable housing will be lost. It has been ascertained a number of Kent local authorities use S106 affordable housing contributions to plug development finance gaps in order to secure delivery. Despite these helpful parallels, the District Council must ensure any use of S106 affordable housing contributions is in accordance with the parameters set in the Affordable Housing Supplementary Planning Document 2011.

It is therefore recommended we obtain Counsel's opinion on the principle of using Section 106 affordable housing contributions, where appropriate, to plug development finance gaps, specifically in relation to gaps arising on rural exceptions housing schemes and/or 100% affordable housing schemes. The advice provided by Counsel will help us defend any challenge or criticism if it were to arise.

Approval is sought to use S106 affordable housing contributions to fund the commission of Counsel. The cost of the commission will be shared equally between the District Council and our main delivery partners - WKHA and English Rural HA - at £1,000 each.

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**All Documents considered:**

None

**Details of any alternative options considered and rejected by the Member when making the Decision:**

None

**Financial implications:**

The proposal, ie the District Council's element, can be fully funded through the use S106 affordable housing contributions

**Legal Implications and Risk Assessment Statement:**

Advice provided by Counsel will help us defend any legal challenge or criticism if it were to arise

**Equality Impacts (Consideration of impacts under the Public Sector Equality Duty)**

The decisions recommended through this paper have a remote or low relevance to the substance of the Equality Act. There is no perceived impact on end users.

**Local Member (s), other Portfolio Holders and Chief Officer/Head of Service Consulted**

Sarah Robson, Deputy Chief Executive, Chief Officer – People & Places

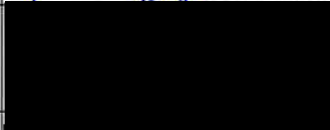
Richard Morris, Deputy Chief Executive, Chief Officer – Planning & Regulatory

Alison Simmons, Head of Housing

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Details of any conflicts of interest a) declared by any executive member who is consulted by the Decision Taker  b) and any details of dispensations granted by the Chief Executive in respect of any declared conflict	
Decision taken by:	Portfolio Holder for Housing & Health
Signed by Portfolio Holder	
Date of Decision	19 <sup>th</sup> Sep '23
Record made by:	ABinnie
Date of record:	25/09/23

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