

RIBBLE VALLEY BOROUGH COUNCIL REPORT TO HEALTH & HOUSING COMMITTEE

Agenda Item No.

meeting date: 5 JUNE 2014
title: COMMUTED SUM PROTOCOL
submitted by: CHIEF EXECUTIVE
principal author: RACHAEL STOTT – HOUSING STRATEGY OFFICER

1 PURPOSE

- 1.1 To seek Committee approval for the implementation of an Affordable Housing Commuted Sum protocol.
- 1.2 Relevance to the Council's ambitions and priorities
- Community Objectives – To meet the identified housing needs in the borough.
 - Corporate Priorities - To continue to be a well managed and efficient Council.
 - Other Considerations – To utilise the opportunity to secure the most appropriate contributions from a new development site.

2 BACKGROUND

- 2.1 Addressing housing needs of the borough continues to be one of the key ambitions of the Council. Therefore, as a priority, a proportion of affordable housing is secured on every new development site. The Addressing Housing Needs Document was adopted Jan 2012 and sets out the Council's objectives with regard to securing affordable units on site. However, because of the amount of development in some parishes in the borough, there is a need to consider alternative options other than on-site delivery only.
- 2.2 The situation has prompted discussion at the Strategic Housing Working Group as to the use of commuted sums as an alternative. The group then held a Member's workshop on 30 April to consider the options further. At the workshop, Members agreed to compare other borough's approach to collecting commuted sums and to propose a protocol for collection and use of commuted sum monies where appropriate.
- 2.3 Nationally, the amount of money accepted by Councils in lieu of new affordable housing on private developments has trebled in the past two years. The total value of cash accepted in lieu of affordable housing trebled from £23.4 million in 2009/2010 to £67 million last year. The number of local authorities accepting commuted sums has doubled from 39 in 2009/2010 and 74 in 2011/2012. In total £161.5million has been accepted in the past four years.
- 2.4 The main concerns of accepting commuted sums are the implications for mixed tenure communities and that commuted sums means less affordable homes built. National Planning Policy Framework states that commuted sums should only be considered where they can be robustly justified.

- 2.5 Where it can be robustly justified, off site provision or a financial contribution in lieu of on site provision may be accepted. This is referred to as a commuted sum and maybe secured through a Section 106 Agreement. Caution needs to be exercised when accepting commuted sums so that the original intent of the policy is delivered ie creating mixed and inclusive communities. Authorities should not accept a commuted sum or off site provision simply because this is the developer's preference.
- 2.6 Off site provision may be preferable to a commuted sum because this would deliver homes rather than sums of money. In this case, a site should be identified and be delivered within an agreed timescale. On the other hand some authorities have used commuted sums to purchase market properties in order to meet housing need, whilst still achieving mixed communities.

3 ISSUES

3.1 Various mechanisms for calculating the requirement are used:

- Some authorities ask for house price of a comparable new build unit minus the affordable housing grant
- Others ask for a contribution equivalent to affordable housing grant plus land value

There is no prescribed methodology for calculating the commuted sum but an offset contribution or payment in lieu should be broadly equivalent value to the cost of on site provision.

- 3.2 Financial viability appraisal can help to work this out. Where an appraisal shows that the effect of affordable housing on provision would be to reduce residual value by x amount, then this sum can be sought from the developer by way of a financial contribution.
- 3.3 Where viability is marginal, provision for 'claw back' may be appropriate in which the commuted sum is paid back at the end of the development providing that development costs were less than expected. On the other hand, in other cases, it may be appropriate to expect the contribution or off site requirement to be delivered on completion of a certain number of market units.
- 3.4 Appendix 1 sets out the method of calculation for Harrogate Borough Council, Waverly District Council, Rutland County Council and Eden District Council.
- 3.5 Harrogate takes the market value of the dwelling of which the sum is due, less the equivalent affordable housing transfer value. This has been calculated as £1,050 per square metre for flats and £1,100 per square metre for houses.
- 3.6 Rutland Borough Council use their affordable housing viability study. There are two key components that are needed to be able to calculate the sum. Firstly:
- a) the financial resources needed to enable each affordable dwelling to be provided; and
 - b) the proportion of the market dwellings upon which the offer contribution is based.

- 3.7 Waverley District Council use the calculation of payment as agreed in the Council's affordable housing viability study. The study contains tables of indicative payments based on various dwelling types and levels of open market values within the borough. The calculation seeks to equate the land value of the affordable plot and therefore how much it would cost to go elsewhere and replace the land. The methodology assumes an additional planning application payment also being made.
- 3.8 Eden Borough Council take a percentage of the open market value of each dwelling constructed, less the cost of the valuation undertaken by the owner to ascertain the open market value. This is the only the case on small sites where the percentage of affordable housing contribution does not round up to a full dwelling. On larger sites they use the same process as Harrogate the difference between market value less the equivalent affordable housing transfer value.
- 3.9 Ribble Valley's current policy is set out in section 4 below. This is an extract from the affordable housing needs policy document adopted January 2012.

4 Commuted Sum – Ribble Valley Approach

Where commuted sums are accepted, the amount payable per dwelling will be a sum equal to the difference between the highest value a partner RSL would be willing to purchase at (without grant) and an independent market valuation of the dwelling. Exceptionally, for example, where affordable housing will be delivered in a more suitable location, the provision maybe transferred to another site in the same locality. In such circumstances it must be in addition to any requirement for affordable housing generated by that site itself or by providing the affordable housing in the same locality. In both instances the same level and type of affordable housing should be provided as that required on the qualifying site although tenure will be determined primarily by the site's location. The mechanism for transfer of dwellings and payments of commuted sums will be secured through a Section 106 Agreement. A commuted sum would be considered where housing needs of a parish had been met. When accepted a consultation exercise would be undertaken to agree the most appropriate use of the sum.

- 4.1 In summary the current adopted methodology is the same as Harrogate BC although we have not set a price per metre and Eden DC. Below is a worked example of the methodology, this is based on information from a current site under construction in the borough.
- 4.2 Example of a current site using the commuted sum calculation proposed:

	<u>Open Market</u> <u>Value</u>	<u>Affordable Housing</u> <u>Value</u>
2 x 2 bed semi detached	170	107
2 x 3 bed semi detached	200	126
1 x 2 bed detached	185	120
Total	<u>925</u>	<u>586</u>

On this site we would require a contribution of £335,000. The affordable housing offer equates to 63% of the total market value.

- 4.3 On any site we had agreed a commuted sum would be appropriate we would require an open market valuation of 30% of the site to deliver 1/3 as 2-bed bungalow, 1/3 as

2-bed property and 1/3 as 3-bed property. The numbers of each house type would depend on the site size and reflect out current house type mix preferences.

- 4.4 We would then require information from an RP as to the price they would be able to offer. The difference between the 2 values would be the amount we would request from the site as an affordable housing commuted sum. The wording to be included within the Section 106 would be drafted to ensure payment would be at an agreed stage in development.
- 4.5 Any decision to take a commuted sum as part of an affordable housing scheme will be taken on a site-by-site basis and the SHWG will consider the proposal and then make their recommendation to Planning and Development Committee.
- 4.6 Grounds to consider a commuted sum
- Where housing need in the parish has been met through affordable housing delivery.
 - Where there is need but for a lesser number of units than will be delivered through 30% of the site being affordable and therefore delivery will be part on-site and part commuted sum.
 - Where there is an identified housing need but the location of the site is not suitable for delivery on-site.

5 Proposed protocol for use of any commuted sums collected

- 5.1 When a commuted sum in lieu of affordable housing is secured by the Council, it will be used to contribute towards a broad range of schemes and initiatives linked to providing additional affordable housing, which may include but will not be limited to the following:
- Support for a registered provider to develop accommodation to meet the specific needs of older people in the borough.
 - Support for registered providers for both the development and acquisition of affordable housing including facilitating any necessary works of improvement or repair.
 - Purchase of affordable units to meet an identified need.
 - Support for specific initiatives to regenerate the existing housing stock, eg empty property grants.
 - Support for specific schemes which are developed to provide permanent/temporary homes to meet an identified need, eg affordable accommodation needs single young people.
 - Purchase of land by the Council to facilitate the provision of affordable housing.
 - Support the development of community land trusts across the borough.
- 5.2 Commuted sums that are generated as a result of the Council's affordable housing policy will be used for initiatives that support delivery of affordable housing, in particular the priority areas identified above. The use of any commuted sum will be referenced within the Section 106 Agreement within which it is provided.
- 5.3 Commuted sums will be applied by Ribble Valley Borough Council to meet local needs in accordance with the housing needs priorities and in line with the priorities set out in the Council's Housing Strategy and any other relevant planning policies and guidance.

Due to the rural nature of the borough, it can be difficult in Ribble Valley to spend the sums within the same immediate local area as they are generated. Consequently, the use of the commuted sums will therefore be applied across the borough.

- 5.4 It is proposed that following endorsement of this protocol, the contributions and their utilisation will be monitored quarterly by the Strategic Housing Working Group and reported on an annual basis to the Health and Housing Committee.

It is vital that a flexible approach is taken to the use of commuted sums to take into account the change in circumstances and opportunities and this is reflected in the broad areas identified for use of commuted sums, albeit that all are related to the provision of affordable housing.

- 5.5 In terms of utilisation of any commuted sums collected, any proposals will require approval by the Strategic Housing Working Group and then by the Health and Housing Committee. Monitoring any schemes funded by commuted sums, will be the responsibility of the Housing Strategy Officer and reported to the Strategic Housing Working group.

6 RISK ASSESSMENT

- 6.1 The approval of this report may have the following implications

- Resources – the collection of commuted sums will allow more control over the type and location of affordable units.
- Technical, Environmental and Legal – there will be staff time implications of the collection, monitoring and control of any commuted sums.
- Political – developing affordable housing and the units not being utilised by households with a local connection would not be well received and therefore this alternative gives the Council more control over what type and where the housing is delivered.
- Reputation – important local housing needs is addressed and is steered by need, not the developers proposing the units.
- Equality & Diversity – All housing needs will be considered not just affordable needs but needs for specialist housing and older persons needs.

7 RECOMMENDED THAT COMMITTEE

- 7.1 Approve the grounds to consider requesting a commuted sum as set out at 4.6.
- 7.2 Approve the protocol for use of commuted sums as set out at 5.1.
- 7.3 Approve the methodology for collection of any commuted sum be retained as approved within the Addressing Housing Needs 2012 policy document as an interim policy pending further consultation and review with relevant bodies and that the outcome of the consultations be reported back to this Committee at the next available meeting.

RACHAEL STOTT
HOUSING STRATEGY OFFICER

MARSHAL SCOTT
CHIEF EXECUTIVE

For further information please ask for Rachael Stott, extension 4567.

FINANCIAL CONTRIBUTIONS: WORKED EXAMPLES

The calculation of a commuted sum is straightforward. It is based on the market value of the dwelling in respect of which the sum is due, as evidenced by its sale price/valuation, less the equivalent affordable housing transfer value (£1050 per square metre for flats, £1100 per square metre for houses).

The difference between the two figures represents the developer subsidy. On single dwelling developments, 40% of this sum is the equivalent contribution due in lieu of affordable housing on site. On developments of 2 or more dwellings, the commuted sum is equivalent to the full contribution for one dwelling, multiplied by 40% of the total number of dwellings.

For example, on a 3 dwelling development the commuted sum would be 1.2 times a full single dwelling contribution.

To mitigate first time impact on developments where affordable housing has not previously been required, it is proposed to discount the contribution by 50% on all dwellings sold or occupied up to 31st December 2015 and by 25% from 1st January 2016 until 31st December 2020. Additionally, the maximum payable on a single dwelling development will be £75,000. This cap will be reviewed on 1st January 2016. The commuted sums will be reviewed again on 1st January 2021, and from this date it is likely that the full contribution will be payable.

Example 1: Three-bedroom house of 90 square metres (sm) sold for £225,000.
Equivalent affordable house transfer price £99,000.
 $£225,000 - £99,000 = £126,000$.
Full contribution @ 40% = £50,400.
Discounted contribution @ 50% = £25,200.

Example 2: 3no three-bedroom houses of 85sm each sold for £200,000 each.
Equivalent affordable house transfer price £93,500.
 $£200,000 - £93,500 = £106,500$.
Full contribution: $3 \times 40\% = 1.2$.
 $1.2 \times £106,500 = £127,800$.
Total Discounted contribution @ 50% = £63,900.

The table below shows some typical examples based on recent property transactions.
 Every proposed commuted sum payable would be subject to financial viability.

Type	Sale Price	Size	Full contribution	Discounted contribution (25%)	Discounted contribution (50%)
Single dwelling development 1-bed flat	£95,000	45sm	£19,100	£14,325	£9,550
Single dwelling development 2-bed house	£160,000	65sm	£35,400	£26,550	£17,700
Single dwelling development 3-bed house	£235,000	85sm	£56,600	£42,450	£28,300
Single dwelling development 6-bed house	£595,000	220sm	£141,200	£105,900	£70,600
Single dwelling development 5-bed house	£1,600,000	460sm	£437,600	£328,200	£218,800 Capped at £75,000

2. What is the Council's approach to the use of 'commuted sums'?

- a. Government policy¹ states it is always assumed that affordable housing will be provided on the land, which is the subject of the planning application, in order to contribute towards creating mixed communities.
- b. However, where it can be robustly justified, off-site provision or a payment in lieu (of broadly equivalent value of providing the affordable housing on site) may be accepted, as long as it will contribute to the creation of mixed communities in the local authority area. This acknowledges affordable housing need to be an authority wide issue, although in the first instance the Council will review priorities for investment in terms of local needs and pipeline schemes at the time.
- c. Policy H5 of the Waverley Borough Local Plan 2002² enables the Council to accept a commuted sum, towards the provision of affordable housing on an alternative site where it is not possible to incorporate affordable housing within a scheme.
- d. However, where a commuted sum is to be considered, the onus will be placed on the applicant to demonstrate why it will not be possible to provide the affordable housing on site.
- e. The applicant will also need to show that other options, such as cross-subsidy between rented and shared ownership units and providing the affordable housing on another site have been considered and why they were discounted.
- f. If the applicant cannot make the scheme work including the level of affordable housing contribution (whether related to the affordable homes equivalent it is based on or the sum calculated) or that the affordable home can not be delivered on the application site, a financial appraisal should accompany a planning application to justify their proposed revised approach and the scope they consider their scheme offers.
- g. The Council will usually need to seek independent scrutiny of this evidence to satisfy itself that the assumptions within it can be agreed in terms of the payment. Payment for such advice will usually be funded by the developer.
- h. Guidance is contained within the Homes & Communities Agency (HCA) Good Practice Note: "Investment and Planning obligations - Responding to the downturns". In this the HCA comments that it is common practice for the applicant to fund the cost of independent validation. The rationale for this is that the Council has a planning

¹ Paragraph 29 of *Planning Policy Statement (PPS3)*,

http://www.communities.gov.uk/pub/931/PlanningPolicyStatement3Housing_id1504931.pdf

² The Waverley Borough Local Plan 2002 is available from the Council's website

(<http://www.waverley.gov.uk/planningpolicy/localplan.asp>)

³

http://www.homesandcommunities.co.uk/public/documents/Investment_and_planning_good_practice_note.pdf

policy, which the applicant is seeking not to comply with, with respect to a particular scheme. In order to assess the applicant's appraisal, if the Council needs to seek advice, it is reasonable for the applicant to bear the costs in these circumstances.

- i. Again, it must be stressed these are exceptions and in all cases the decision on whether to accept a financial contribution rather than on site provision will be the Council's.

3. How will the money be used?

- a. The Council will use financial commuted sums in a number of ways and will require the flexibility to do so to be reflected in its approach and in the s.106 agreement. Where such contributions are accepted, the strategy will continue to provide an additional affordable housing enabling tool, which could be important in terms of the current (and likely near future) uncertain HCA investment climate.
- b. Commuted sums will be earmarked to enable the provision of affordable housing through a variety of means e.g.
 1. To support the new build development of affordable housing or create additional, larger or a different tenure mix within the existing stock
 2. To provide 'top up' subsidy on schemes in order to make it possible for a higher proportion of affordable homes for social rent
 3. To fund extra units of affordable housing on alternative sites
 4. To contribute to forward funding / kick-starting of schemes or to reducing funding gaps within pipeline / current affordable housing schemes and other similar initiatives according to scheme circumstances and the funding climate

4. How is a commuted sum calculated?

- a. On sites where the Council has decided to take a financial contribution the Council will calculate the payment having regard to the advice in PPS3 and the Council's Affordable Housing Viability Study⁴
- b. The Affordable Housing Viability study contains tables of indicative payments based on various dwelling types and levels of open market values seen within the Borough, as expressed through a range of "Value Points".
- c. The suggested calculation seeks to equate to the land value of the relevant dwelling plots (those that would have been made available for on-site affordable housing).
- d. This is consistent with the Council's Local Plan 2002, which states "The nature and scale of provision of subsidised affordable housing on individual sites will be a matter for negotiation between the Council and

⁴ http://www.waverley.gov.uk/site/scripts/documents_info.php?documentID=190&pageNumber=5

developers. The starting point will be the objective of acquiring serviced building land free of charge”.

- e. In essence the thinking involves calculating how much it would cost to go elsewhere and replace the land on which the affordable housing would have been provided on-site.
- f. This approach assumes a straightforward payment made by the landowner (who may also be the developer) under the terms of a Section 106 agreement in much the same way as occurs with planning obligations for aspects such as highways/transport, open space, education etc.
- g. The methodology assumes an additional planning obligations payment being made by the developer, albeit from the increased Gross Development Value sales receipts which results from having no affordable housing on-site.
- h. Table 1 below gives an indicative picture of the scale of commuted sums the Council's formulaic approach generates, although this is intended to inform expectations and will differ according to the specifics of the site and the local housing market at the time of negotiation – including location, scheme values (value point), and the like.
- i. The final sum agreed will be at the discretion of the Council.

5. What are the steps in calculating the payment?

- a. Assess the level(s) of open market value (OMV) relevant to the location and scheme. based on sales rate (e.g. £ per sq m / sq ft) of relevant or comparative property locally (see indicative property value point for each size and type of home in Table 1)

Table 1; Indicative financial contributions in lieu of affordable housing,
Source: Affordable Housing Viability Study 2008/9

Property Value Point	1 Bed Flat		2 Bed Flat	
	Open market value £	Commuted Payment	Open market value £	Commuted Payment
1	£153,000	£67,037	£198,000	£86,754
2	£178,500	£78,210	£231,000	£101,213
3	£204,000	£89,383	£264,000	£115,617
4	£229,500	£100,555	£297,000	£130,131
5	£255,000	£111,728	£330,000	£144,590

Property Value Point	2 Bed House		3 Bed House		4 Bed House	
	Open market value £	Commuted Payment	Open market value £	Commuted Payment	Open market value £	Commuted Payment
1	£228,000	£99,898	£258,000	£113,043	£303,000	£132,759
2	£266,000	£116,548	£301,000	£131,883	£353,500	£154,886
3	£304,000	£133,198	£344,000	£150,724	£404,000	£177,013
4	£342,000	£149,847	£387,000	£169,564	£454,500	£199,139
5	£380,000	£166,497	£430,000	£188,405	£505,000	£221,266

- b. Consider the type and floor area of a suitable relevant affordable housing dwelling for use in the calculation. Apply the OMV sales rate (from step a) so as to adjust the OMV for the appropriate dwelling size(s)
- c. Multiply by the residual land value (RLV) percentage (38.1%⁵) considered applicable. This provides a base land value.
- d. Add 15%⁶ of the result (of adjusted open market value x 38.1% as at c) to reflect site acquisition and servicing costs.
- e. This gives the sum(s) equivalent to the land cost per whole affordable dwelling type(s) or may be more than one level of sum if there are multiple dwelling types being factored into the affordable housing calculation).
- f. Apply that (or those) to the relevant total scheme numbers and the Council's affordable housing proportion (currently 30%, but subject to future review). In this way, the calculation can deal with part dwelling equivalents – the outcome need not be affected where this end stage does not produce round (whole) dwelling number dwellings.
- g. Table 2 below provides a worked example.

Table 2: Worked example of commuted sum

STEP	e.g.
Scenario= Development of 10 x three bed houses with OMVs at value point 3 (see Table 1)	
Average open market sales value, for a comparable size and type of dwelling in the local area which would otherwise have been provided on site (see Table 2)	Open market value of £344,000 for a 3 bed house in Value Point 3, 110m2
Work out cost per M2	£3,127
Multiply cost per m2 by 85 for floor area of affordable home with 3 bedrooms	X 85=£265,818
Multiplied by residual land value (38.1%)	X 38.1%= £101,276
Plus 15% of the result (of affordable market value x 38.1%)	+£15,191
= payment in lieu per three bed house	=£116,467
Multiplied by 3 (to represent the units which would otherwise have been provided on site) =TOTAL PAYMENT IN LIEU OF £349,402	

- h. The Council has a commuted sums calculator on the website.
- i. To discuss in more detail, please contact Alice Lean, Housing Strategy and Enabling Manager on (01483) 523 096 or email alice.lean@waverley.gov.uk

⁵ 38.1% as average Residual Land Value, as per Affordable Housing Viability Study 2008-9
⁶ 15% as per Affordable Housing Viability Study 2008-9

APPENDIX 1

Calculation of Commuted Sums for Off-Site Provision of Affordable Housing

- A1.1 Further information on the local and national policy considerations, relating to the payment of commuted sums for the off-site provision of affordable housing, are included in the PO-SPD and the main body of the AHC-SPD.
- A1.2 The commuted sum for off-site provision is calculated using the Affordable Housing Viability Study or subsequent studies. There are two key components that are needed to calculate the commuted sum.
- a) The financial resources needed to enable each affordable dwelling to be provided
 - b) The proportion of the market dwellings upon which the off-site contribution is based.
- A1.3 At the time of writing, the key study is the Council's Affordable Housing Viability Study (AHVS), completed by Fordham Research in August 2010.
- A1.4 Chapter 10 of the AHVS sets out its approach to calculating commuted sums. In order to ensure that the commuted sums for off-site provision are equivalent to the cost of on-site provision (in line with national guidance), the consultants assume that on-site provision would have involved affordable dwellings that are the same size as the market dwellings on the development site and base the off-site contribution on this (see AHVS paragraph 3.8).
- A1.5 In particular, AHVS paragraphs 10.19 and 10.20 set out the commuted sums on the basis of per square metre for both urban and rural sites, based on the assumption that Social Housing Grant (grant) from the Government is available at generous levels (see AHVS Executive Summary paragraph S11(iv)). This is not the case in the current funding environment, where Homes and Communities Agency funding is highly restricted and as a matter of policy is not generally paid to subsidise section 106 contributions.
- A1.6 As well as a base assumption which includes grant, the report looks at a number of alternative scenarios to reflect contributions towards items other than affordable housing, whether or not grant is available and whether the site is urban or rural. These are in the AHVS Table 10.2. The Council will update the findings from the viability statement as necessary to reflect market conditions. Indexation will also be applied to sums in line with the PO-SPD.

- A1.7 The table below sets out the current approach at the time of writing, based on the AHVS. The figures will be revised from time to time to reflect market conditions or the production of a new AHVS or broadly equivalent document. This may affect both the proportion of affordable homes required and the amount of commuted sum per affordable home. This revision is within the scope of this SPD as it stands and the SPD will not require revision to implement these. As stated in the PO-SPD, where the Council believes that the viability of a development may improve over time, deferred contributions may be used in some cases which may affect the figures used below.

Notes on the commuted sum calculation below

The following calculations are based on the Affordable Housing Viability Study undertaken by Fordham Research in 2010 (AHVS). This is referred to in Policy CS11 (Affordable Housing) and its supporting text in relation to the calculation of commuted sums. Scenario is zero grant, with base scenarios for other s106 (£12k) and Code for Sustainable Homes (level 3) (see AHVS, Tables 8.1 & 10.2). The methodology may be revised if the AHVS is updated or replaced.

The Council has used the 'urban' commuted sums from Table 10.2 for all locations, as the methodology in the AHVS measures the cost of affordable housing provision by the effect that on site provision would have had on the residual land value. Table 6.1 of the AHVS shows that land value is much higher on rural sites (provided they are not exceptions sites). Using the rural figures would have distorted the commuted sum calculation. Therefore in Table 10.2 of the AHVS, the 'Contribution £12k per dwg' row under the heading 'Zero Grant CSH = Level 3' will be used. Developers will be charged per square metre based on the average size of market homes on the site, up to a maximum of 85m². The use of a square metre rate up to 85m² means that developments of modest market homes will not be penalised. The same size was used in the modelling for developers' contributions for other services and is also within the Homes and Communities Agency's range for a 5 person home.

All the figures below are subject to indexation on an on-going basis.

**CALCULATION OF COMMUTED SUMS FOR AFFORDABLE HOUSING WHERE
PERMITTED BY POLICY CS11 OF THE RUTLAND CORE STRATEGY**

Site type	Percentage of affordable housing to be provided from Policy CS11.	Affordable housing commuted sum required per affordable home based on average gross internal floorspace of market properties		Commuted sum due, subject to viability, expressed as amount due PER MARKET HOME in £ per square metre gross internal floorspace	Maximum collectable PER MARKET HOME (that is, at 85m ² gross internal floorspace)
		in square feet (From AHVS Table 10.2)	converted to per square metre		
All developments for which a commuted sum for affordable housing would be appropriate	35.0%	£74.80	£804.08	£281.43	£23,922

A1.8 Policy CS11 and its supporting text addresses issues where there are concerns regarding the viability of specific sites. The Council has produced "Guidance on the Council priorities in negotiating Planning Obligations and Developer Contributions" (June 2010) concerning the relative priority of affordable housing and other items, when there may be a question regarding viability for a specific site.

DATED FIRST DAY OF JULY 2013

JOHN ROBERT SMITH AND BANK OF BRITAIN

DEED CONTAINING A PLANNING OBLIGATION

Pursuant to Section 106 of the Town and Country Planning Act 1990 as amended
Relating to Land Adjacent Mansion House, Penrith shown edged red on Plan attached hereto.

Ref: Planning Application 13/9999

**Template 1 - Commuted Sum for Affordable Housing – 3 units or less
– One owner and a mortgagee**

UNILATERAL PLANNING OBLIGATION

This Deed is made the first day of July 2013 by JOHN ROBERT SMITH of 1 Mansion House Gardens, Penrith, Cumbria, CA99 0ZZ ("the Owner") and BANK OF BRITAIN of 1 Acacia Avenue, London, L1 0ZZ ("the Mortgagee")

INTRODUCTION

- 1 Eden District Council ("the Council") is the local planning authority for the purposes of the Act for the area in which the Site is situated and is entitled to take benefit of this Deed of Undertaking and by whom the obligations contained in this Deed are enforceable
- 2 The Owner is the freehold owner of the Site subject to a mortgage in favour of the Mortgagee.
- 3 The Owner has submitted the Application to the Council and the Application is one where the Council's housing planning policies require the provision of affordable housing as part of the Development
- 4 The Owner enters into this Deed with the consent of the Mortgagee in order to secure the planning obligations contained in this Deed whereby the affordable housing requirement of the Development may be met by alternative means.
- 5 This Deed of Undertaking is intended to create a planning obligation for the purposes of section 106 of the Act and shall bind the landowner and their successors in title.

NOW THIS DEED WITNESSES AS FOLLOWS:

OPERATIVE PART

1 DEFINITIONS

For the purposes of this Deed the following expressions shall have the following meanings:

"Act"	the Town and Country Planning Act 1990 as amended
"Affordable Housing"	subsidised housing that will be available to persons who cannot afford to rent or buy housing generally available on the open market
"Application"	the application for planning permission dated 1 st June 2013 and given reference number 13/9999
"Commenced"	the date on which any material operation (as defined in Section 56(4) of the Act) forming part of the Development begins to be carried out other than (for the purposes of this Deed and for no other purpose) operations consisting of site clearance, demolition work, archaeological investigations, investigations for the purpose of assessing ground conditions, remedial work in respect of any contamination or other adverse ground

conditions, diversion and laying of services, erection of any temporary means of enclosure, the temporary display of site notices or advertisements and "Commence Development" shall be construed accordingly.

"Commuted Sum"	3% of the Open Market Value of each dwelling constructed/created through conversion less the cost of the valuation undertaken by the Owner to ascertain that Open Market Value
"Development"	the development proposed in the Application
"Mortgagee"	the mortgagee and any successor thereof
"Occupation" and "Occupied"	occupation for the purposes permitted by the Planning Permission but not including occupation by personnel engaged in the construction, the fitting out or the decoration or occupation in relation to security operations
"Open Market Value"	in respect of any dwelling such figure as shall be determined by a Royal Institution of Chartered Surveyors qualified valuer instructed by the Owner and verified by an independent valuer appointed by the Council. In the event of any disagreement as to the proper Open Market Value such disagreement shall be determined by the District Valuer or, in the event that such position no longer exists, a person appointed by the President for the time being of the Royal Institution of Chartered Surveyors, as the open market value of that dwelling at the date of completion of the dwelling
"Owner"	any person with an interest in the Site and any person deriving title from such person
"Plan"	the plan attached to this Deed
"Planning Permission"	the planning permission for the Development subject to conditions to be granted by the Council pursuant to the Application
"Site"	the property (including land and any buildings) against which this Deed may be enforced as shown edged red on the Plan and described in the First Schedule to this Deed.

2 CONSTRUCTION OF THIS DEED

2.1 Where in this Deed reference is made to any clause, paragraph or schedule or recital such reference (unless the context otherwise requires) is a reference to a clause, paragraph or schedule or recital in this Deed.

- 2.2 Words importing the singular meaning where the context so admits include the plural meaning and vice versa.
- 2.3 Words of the masculine gender include the feminine and neuter genders and words denoting actual persons include companies, corporations and firms and all such words shall be construed interchangeable in that manner.
- 2.4 Wherever there is more than one person named as a party and where more than one party undertakes an obligation all their obligations can be enforced against all of them jointly and against each individually unless there is an express provision otherwise.
- 2.5 Any reference to an Act of Parliament shall include any modification, extension or re-enactment of that Act for the time being in force and shall include all instruments, orders, plans regulations, permissions and directions for the time being made, issued or given under that Act or deriving validity from it.
- 2.6 References to any party to this Deed shall include the successors in title to that party and to any person deriving through or under that party any title interest or estate in any part of the Site and in the case of the Council the successors to its relevant statutory functions.

3 LEGAL BASIS

- 3.1 This Deed is made pursuant to Section 106 of the Act and Section 111 of the Local Government Act 1972.
- 3.2 The covenants, restrictions and requirements imposed upon the Owner under this Deed create planning obligations pursuant to Section 106 of the Act and are enforceable by the Council as local planning authority against the Owner.

4 CONDITIONALITY

- 4.1 This Deed shall not take effect unless and until
- (i) the Council has granted the Planning Permission; and
 - (ii) the Development has been Commenced

5 THE OWNER'S COVENANTS

- 5.1 The Owner covenants with the Council to observe the restrictions and perform the obligations as set out in the Second Schedule to this Deed and that there is no other person with a legal interest in the Site other than the parties who have entered this Deed.

6 THE MORTGAGEE'S CONSENT

- 6.1 The Mortgagee acknowledges and declares that this Deed has been entered into by the Owner with its consent and that the Site shall be bound by the obligations contained in this Deed and that the security of the mortgage over the Site shall take effect subject to this Deed PROVIDED THAT the Mortgagee shall otherwise have no liability under this Deed unless the Mortgagee takes possession of the Site in which case the Mortgagee will be bound by the said obligations and that such liability will cease once the Mortgagee has parted with its interest in the Site.

7 MISCELLANEOUS

- 7.1 No provisions of this Deed shall be enforceable under the Contracts (Rights of Third Parties) Act 1999

- 7.2 This Deed shall be registrable as a local land charge by the Council.
- 7.3 Where the agreement, approval, consent or expression of satisfaction is required by the Owner from the Council under the terms of this Deed such agreement, approval or consent or expression of satisfaction shall not be unreasonably withheld or delayed and any such agreement, consent, approval or expression of satisfaction shall be given on behalf of the Council by the Head of Planning Services, or in the event of any restructuring of posts by the Council such successor as the Council may from time to time determine, and any notices shall be deemed to have been properly served if sent by recorded delivery to the principal address or registered office (as appropriate) of the relevant party.
- 7.4 Insofar as any clause or clauses of this Deed are found (for whatever reason) to be invalid illegal or unenforceable then such invalidity illegality or unenforceability shall not affect the validity or enforceability of the remaining provisions of this Deed.
- 7.5 If the Planning Permission is quashed or revoked or otherwise withdrawn or ceases to have effect by operation of law or expires before the Development has commenced then
a) this Deed shall (except for paragraph b) below) cease to have effect and
b) the Council shall forthwith cancel all entries made in the register of local land charges in respect of this Deed and return to the Owner any payments made under the terms of this Agreement
- 7.6 No person shall be liable for any breach of any of the planning obligations or other provisions of this Deed after such person shall have parted with its entire interest in the Site but without prejudice to liability for any subsisting breach arising prior to parting with such interest.
- 7.7 Nothing in this Deed shall prohibit or limit the right to develop any part of the Site in accordance with a planning permission (other than the Planning Permission) granted (whether or not on appeal) after the date of this Deed.
- 7.8 Nothing contained or implied in this Deed grants planning permission or other consent or shall prejudice or affect the rights powers duties and obligations of the Council in the exercise of its functions as a Local Authority and its rights powers duties and obligations under any statute byelaw or regulation may be as fully and effectually exercised as if the Council were not a party to this Deed

8 WAIVER

- 8.1 No waiver (whether expressed or implied) by the Council of any breach or default in performing or observing any of the covenants terms or conditions of this Deed shall constitute a continuing waiver and no such waiver shall prevent the Council from enforcing any of the relevant terms or conditions or for acting upon any subsequent breach or default.

9 CHANGE IN OWNERSHIP

The Owner undertakes to give the Council immediate written notice of any change in ownership of any of its interests in the Site occurring before all the obligations under this Deed have been discharged such notice to give details of the transferee's full name and registered office (if a company or usual address if not) together with the area of the Site or unit of occupation purchased by reference to a plan.

10 JURISDICTION

This Deed is governed by and interpreted in accordance with the law of England.

11 DELIVERY

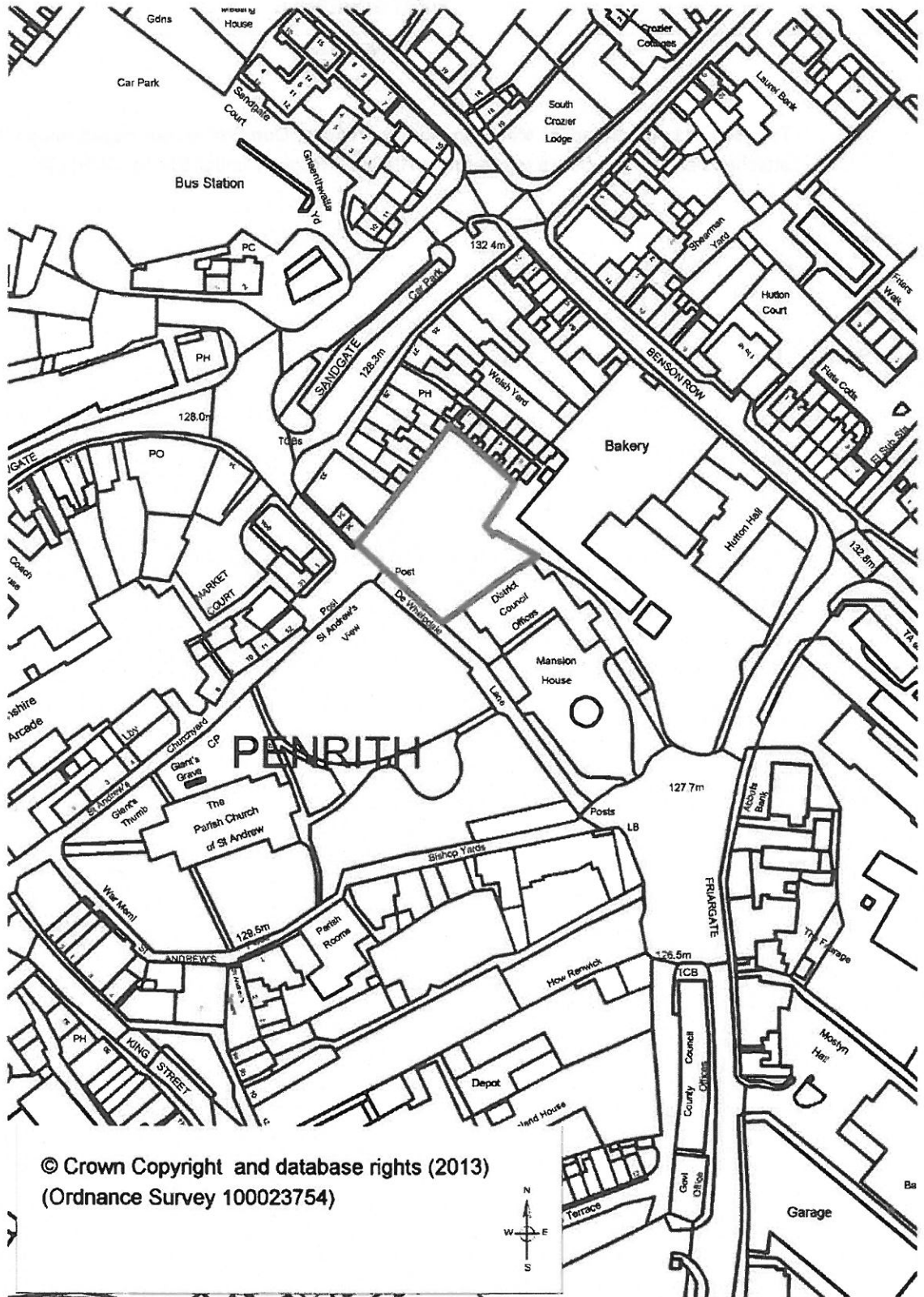
The provisions of this Deed (other than this clause which shall be of immediate effect) shall be of no effect until this Deed has been dated.

IN WITNESS whereof the parties hereto have executed this Deed on the day and year first before written.

FIRST SCHEDULE

The Site

The land at **Land Adjacent Mansion House, Penrith, Cumbria** shown edged red on the Plan attached hereto. The Site is registered at HM Land Registry under title no. CU99999.



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 (Ordnance Survey 100023754)



John Smith

SECOND SCHEDULE

1 Commuted Sum

- 1.1 Prior to the Occupation of each dwelling within the Site the Owner shall make payment of the Commuted Sum to the Council in respect of that dwelling
- 1.2 If there shall be any disagreement as to the Open Market Value which requires the matter to be determined by the District Valuer, the cost of engaging the District Valuer shall be borne by the Owner and payment of that cost shall be made at the same time as payment of the Commuted Sum
- 1.3 Payment of the Commuted Sum to the Council will be on the basis that the payment will be made into the Council's Affordable Housing Fund which will be managed and used in accordance with the provisions of the version then current of the Supplementary Planning Document on the use by the Council of Off-Site Affordable Housing Commuted Sums, provided always that such capital and interest (if any) is used for Affordable Housing purposes only, and that if any part of the Commuted Sum (including interest if any) remains unspent after the expiry of a period of ten years after the payment of the Commuted Sum to the Council, the Council shall repay the said unspent sum to the owner who paid the Commuted Sum unless at that time the said owner decide to gift aid any unspent sum to the Council for Affordable Housing purposes only.