Commuted sum negotiations
practice note-
Payments in lieu of affordable housing on site
1. What is a ‘commuted sum’?

a. A commuted sum (or payment in lieu) is an amount of money, paid by a developer to the Council, where the size or scale of a development triggers a requirement for affordable housing, but it is not possible to achieve appropriate affordable housing on site.

b. This route will be followed only where more direct provision of affordable homes has been explored and the Council is satisfied that is not workable given the particular circumstances.

c. The money will be used to provide affordable housing on an alternative site.

d. It is therefore appropriate that the level of the payment in lieu should relate to how much it will cost an affordable housing provider to buy land on the open market. This is consistent with the Council’s approach to landowner or developer subsidy towards affordable housing provision (see 2)

e. The principles applied in the collection and use of these payments are very similar to those for other planning obligations – they will generally be dealt with through a legal agreement (under Section 106) related to the land, which triggers obligations once the specific planning permission is implemented.
2. What is the Council's approach to the use of ‘commuted sums’?

a. Government policy\(^1\) 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 2002\(^2\) 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

\(^2\) 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 Study
   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

---

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

<table>
<thead>
<tr>
<th>Property Value Point</th>
<th>1 Bed Flat</th>
<th>2 Bed Flat</th>
<th>3 Bed House</th>
<th>4 Bed House</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>Open market value £</td>
<td>Commuted Payment</td>
<td>Open market value £</td>
<td>Commuted Payment</td>
</tr>
<tr>
<td>1</td>
<td>£153,000</td>
<td>£67,037</td>
<td>£198,000</td>
<td>£86,754</td>
</tr>
<tr>
<td>2</td>
<td>£178,500</td>
<td>£78,210</td>
<td>£231,000</td>
<td>£101,213</td>
</tr>
<tr>
<td>3</td>
<td>£204,000</td>
<td>£89,383</td>
<td>£264,000</td>
<td>£115,617</td>
</tr>
<tr>
<td>4</td>
<td>£229,500</td>
<td>£100,555</td>
<td>£297,000</td>
<td>£130,131</td>
</tr>
<tr>
<td>5</td>
<td>£255,000</td>
<td>£111,728</td>
<td>£330,000</td>
<td>£144,590</td>
</tr>
</tbody>
</table>
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>
<thead>
<tr>
<th>Table 2: Worked example of commuted sum</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>STEP</strong></td>
</tr>
<tr>
<td>Scenario= Development of 10 x three bed houses with OMVs at value point 3 (see Table 1)</td>
</tr>
<tr>
<td>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)</td>
</tr>
<tr>
<td>Work out cost per M²</td>
</tr>
<tr>
<td>Multiply cost per m² by 85 for floor area of affordable home with 3 bedrooms</td>
</tr>
<tr>
<td>Multiplied by residual land value (38.1%)</td>
</tr>
<tr>
<td>Plus 15% of the result (of affordable market value x 38.1%)</td>
</tr>
<tr>
<td>= payment in lieu per three bed house</td>
</tr>
<tr>
<td>Multiplied by 3 (to represent the units which would otherwise have been provided on site)</td>
</tr>
</tbody>
</table>

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
6. **How will this be monitored?**

   a. A record will be kept and monitored of all sums received and how they have been spent, via the Council’s monthly Capital and Revenues Project Monitoring Group.

   b. As above, these arrangements will be the subject of an agreement under Section 106 of the Town and Country Planning Act 1990.

   c. Generally, the Council will expect the following to be incorporated in the S.106 agreement:

      1. The agreed sum to be index linked on an annual basis from the date of the Committee resolution on the planning permission until the date of actual payment. S.106 agreements can take time to complete so it will be important for applicants to consider the requirements at an early stage, working closely with the Council.

      2. The timing / trigger for the payment to be made. For example on the commencement of development; or 50% on commencement and 50% when 50% of the units have been sold / occupied. The specifics of this may be discussed.

      3. Penalty interest will be payable on late payments.

      4. The Council will have up to 10 years from when the sum was received in which to spend the contribution.

      5. Priority will be given to schemes that provide affordable housing in the same parish or town area as the sum was received.

      6. In the absence of suitable alternatives in the local area, schemes in surrounding parishes or towns will then be considered.

      7. If no suitable sites in the surrounding area are available, other development in Waverley will be eligible before consideration is given to schemes in the wider area (beyond Waverley), to which the Council receives nomination rights or benefits Waverley residents.

   d. All commuted sums received are added to the available resources in the Homes and Communities Agency Council’s Housing Grant Budget. The 1988 Local Government Act s.25 allows Local Authorities to support the provision of affordable housing, subject to the appropriate Homes and Communities guidelines in result of maximum public subsidy, with all schemes subject to Homes and Communities Agency Guidelines.
7. **How will this be managed?**

a. The Council will use commuted sums to develop affordable housing within 10 years from the date a sum was received.

b. The Council will return unspent commuted sums, with accrued interest, to the developer, if they are not spent for the purposes for which they were sought within a ten-year period from the date the money is paid to the Council.

c. The model values will need to be regularly updated. The approach and assumptions will be monitored and reviewed if necessary, depending on delivery experiences. In any event, the approach is intended to cope with an element of flexibility in its application.

d. The payment is to be index-linked from the date of the Agreement, to the date the money is due to be paid to the Council. This will be by an amount equal to the proportionate upward only change in the All in Tender Price Index of the Building Costs Information Service (BCIS) of the Royal Institution of Chartered Surveyors.

e. The Council will normally aggregate financial contributions from different sites and will spend contributions in the way that best achieves the Council’s and local communities’ priorities for affordable housing. The number of units resulting from expenditure may be more or less than the units used to calculate the contribution as dwelling types, tenure, specifications and other aspects will vary from scheme to scheme.