# Affordable Housing Commuted Sums Policy March 2018

## 0 Purpose

* 1. The purpose of this policy is to outline the circumstances when an Affordable Housing Commuted Sum or financial contribution is applicable and to give guidance on how the sums may be used.
	2. An Affordable Housing Commuted Sum is a financial contribution made by developers, on residential sites and applicable in either as a replacement for not providing on-site affordable housing or as the fractional element of the affordable housing due, as per the Supplementary Planning Guidance (SPG) on Affordable Housing for the purpose of enabling affordable housing.

## Policy

* 1. In accordance with both Welsh Government’s *Planning Policy Wales, Planning & Affordable Housing Technical Advice Note (TAN) 2 Affordable Housing* and local SPG, there is a clear preference for onsite provision to be the priority option for affordable housing, there will however be exceptional circumstances when off site provision can be justified. Sums will be negotiated for planning sites where affordable housing is required, but the provision cannot be made on site, nor can it be provided on an alternative site within the locality within five years of the planning permission being granted.
	2. Since the adoption of the Local Development Plan (LDP) in 2013 and its associated policies, the affordable housing requirement is now 10% (with the facility for this to be reviewed should market conditions improve). It is also now applicable to all development of 3 or more units, requiring sites of 3-9 units to provide an affordable housing commuted sum. This has had the effect of Denbighshire receiving small financial contributions.
	3. The commuted sum applicable is calculated on a case by case basis and in accordance to the formula outlined in the Affordable Housing SPG.
	4. Affordable Housing Commuted Sums are secured through the use of Section 106 legal agreements. (The legislative framework is set out in Section 106 of the Town and Country Planning Act 1990, as amended by Section 12 of the 1991 Planning & Compensation Act.) These are time specific and ordinarily must be spent within five years of the Council having received payment from the developer. Any sum not spent within the timescale specified within the Section 106 legal agreement must be repaid to the developer in full.
	5. Due to the rural nature of a large proportion of Denbighshire it can be difficult to spend the sums within the same locality as they were generated, as there may be no feasible suitable sites or schemes available within the locality. Consequently, the use of commuted sums will therefore be applied in the following cascade once this policy is adopted:
		+ Tier One: Ward and City, Town, Community Council area – One year; followed by
		+ Tier Two: Local Housing Market Area – One year; followed by
		+ Tier Three: Countywide – Three years.
	6. This area cascade for the spending of commuted sums, allows for local input, but also ensures that small sums of money can be pooled and used strategically to alleviate housing need across the county
	7. Affordable Housing commuted sums are used in a strategic manner to enable the supply of affordable housing across the county in the following order (subject to the options being available):

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| **HIGH** |
| Development of affordable housing (match funding from other source such as Welsh Government, RSL private finance or Housing Revenue Account to bring forward more units) |
| Fund an empty homes scheme |
| Purchase of land for affordable housing schemes |
| Kickstart funds for stalled development schemes |
| Undertake housing surveys or equivalent when necessary |
| Any strategically prioritised scheme which increases the supply of affordable housing/meets a recognised housing need within the administrative area. |
| **MEDIUM** |
| Adaption or extensions to properties for disabled people to stay in their own homes |
| Facilitate Gypsy & Traveller sites |
| Fund schemes to prevent mortgage repossessions (eg Mortgage Rescue) |
| Fund Rural Housing Enabler / Affordable Housing role |
| Administration costs for running the above schemes |
| **LOW** |
| Homebuy/Equity loans schemes (to include specific schemes for first time buyers to help stimulate market growth) |
| Loans and deposits to Registered Social Landlords to guarantee Affordable Housing nominations |
| Regeneration/repair grants |
| Deposits to ‘agencies’ (private landlords) for Affordable Housing nominations |
| Developing key worker and supported housing initiatives |

* 1. A proportion of each commuted sum can be used to contribute towards the Council’s associated administration costs in facilitating either the above and/or developing a more strategic approach to affordable housing policy and investment across the county.
	2. Affordable Housing Commuted Sums can only be used on initiatives which support the delivery of affordable housing in the County.
	3. If the affordable housing commuted sums have been paid before April 2018 and has been partially spent with only a relatively small sum remaining and/or interest have been added, this money

can be pooled and spent on County priority scheme/s in accordance with the priorities established in

2.7 of this policy.

2.11 The financial and administrative management of the fund will be the responsibility of Denbighshire County Council’s Planning and Public Protection Service. Funds will be held in a separate high interest account and will be ring fenced for affordable housing provision.

## Procedure

* 1. Chargeable pre-application discussions with a Development Management planning officer are available and encouraged to explain the Council’s affordable housing requirements and procedures. The Council’s Supplementary Planning Guidance on Affordable housing, is available on-line and copies can be obtained on request.
	2. Where planning permission is likely to be granted and a commuted sum for affordable housing is required, the applicant may:
		+ Make a voluntary payment before the decision is issued, or
		+ Enter into a legal agreement with the Council i.e. Section 106 agreement. This will require the financial contribution to be made, and the decision notice will not be issued until the legal agreement has been completed. The Council’s legal agreements will specify the timescale for paying any commuted sums. The Council will require security provision to act as a guarantee where large contributions are required. Bonds are the Council’s preferred form of security.
	3. Where payment of a commuted sum is required, a decision notice will only be issued once the section 106 agreement has been signed or payment of the commuted sum has been received. In the event of an appeal following a refusal of a planning application, where the payment of a commuted sum had been negotiated, the Council will seek the necessary arrangements to ensure that the permitted affordable housing provision is made in the event of the appeal being allowed.
	4. The procedure for determining the allocation of commuted sums is a two stage process:
		+ Firstly, the planning stage as described in sections two and three above. Here the planning and housing officers in conjunction with the developer, Members and RSLs, will agree the type of affordable housing provision or whether a commuted sum is more appropriate.
		+ The second stage deals with post planning decisions as to how the sum will be spent.
	5. The Council’s current delegation arrangements provide a mechanism for officer decisions where there are established criteria. Currently the Head of Planning and Public Protection has been granted delegated powers to determine the second stage of this process on how commuted sums for affordable housing will be spent.
	6. This procedural note seeks to confirm these delegated arrangements, subject to the following amendments and recommendations:
	7. The decision to allocate commuted sums for affordable housing shall remain with the Head of Planning and Public Protection. The day to day operation of the commuted sum procedure will be undertaken by the Housing Strategy & Development Officer (or equivalent).
	8. All proposals, whether full or outline, to use such sums should be submitted with supporting documentation to the Housing Strategy & Development Officer using the affordable housing commuted sum pro forma (attached at appendix one).
	9. All proposals should comply with the Council’s SPG and other relevant affordable housing policies. They will then be considered against the commuted sum project criteria. Where there are competing proposals priority will be decided through the use of a prioritisation matrix (see appendix two).
	10. Upon receipt of all relevant information, the Housing Strategy & Development Officer will provisionally confirm to the proposer within 21 days, whether the scheme meets the qualifying conditions as outlined above. Proposals will then be considered by the Head of Planning & Public Protection/ Lead Member for Highways, Planning & Sustainable Travel and Housing Strategy Delivery Group (or equivalent) for their comments and observations. If this falls outside the normal meeting cycle comments will be requested electronically.
	11. After consulting the Housing Strategy Delivery Group (or equivalent), the Housing Strategy & Development Officer will circulate qualifying proposals, and recommendations, to the local Member(s), who will be given 28 days to present their views upon any proposed scheme.
	12. Where there are diverging views regarding any proposal, it may be necessary for the Housing Strategy & Development Officer to convene a meeting of the appropriate parties listed above and the Head of Planning and Public Protection, to examine the proposal in greater depth. Should unanimous agreement not be reached upon how a specific sum will be spent then the final decision making power will rest with the Head of Planning and Public Protection.
	13. Where an applicant has made an outline application which has been approved, an agreed timescale will be put in place for submission of the detailed application. Any detailed application will be subject to the above consultation process.
	14. Awards of funding will be time-limited. In addition to which the Head of Planning and Public Protection in consultation with the Housing Strategy & Development Officer reserves the right to withdraw funding for approved schemes where:
		+ The scheme will not utilise the full commuted sum before any unspent element must be returned to the developer. In such circumstances the Head of Planning and Public Protection will apportion any funding that they consider may not be spent within this timescale to alternative projects. Full consultation will be undertaken with the scheme developer before funds can be transferred.
		+ There are less than two years within which the commuted sum must be spent before being returned to the developer, unless the applicant can demonstrate that it will be spent.
		+ An alternative scheme has become available that provides better value for money/local benefits. Such schemes will only be considered once full consultation has been undertaken as outlined above.
	15. Initiatives must be substantially completed with 24 months of approval being granted. Failing which the award will lapse and applicants will need to re-apply. Payments will normally only be made upon satisfactory completion of the scheme. Phased or staged payments will be considered based on an architect’s certificate and where it has been clearly demonstrated in the initial application that they are a prerequisite for the project to be deliverable.
	16. Schemes for smaller amounts of funding (up to £5,000) where a more immediate response is required, e.g. Mortgage Rescue, may be dealt with following consultation with the Lead Member for Highways, Planning & Sustainable Travel and Head of Service for Planning & Public Protection without convening a meeting or consulting with the Housing Strategy Delivery Group to ensure that action may be taken in a timeous manner to prevent homelessness or redundancy of the application.
	17. Monitoring
	18. The monitoring of this policy will be undertaken through the following mechanisms:
		+ Close working with the relevant local Councillors;
		+ Regular updates to the Lead Member for Highways, Planning & Sustainable Travel and the Housing Strategy Delivery Group (or equivalent);
		+ Scrutiny and other committees – tied into Housing Strategy updates;
		+ Report to Member Area Groups on an six-monthly basis,
		+ At six-monthly MAG review pooling of monies and the cascade will be reviewed. If the trigger point for *Tier Two – Local Housing Market Area* has been reached the relevant local Councillors will be notified within 14 days of the MAG meeting by the Housing Strategy & Development Officer (or equivalent).
		+ If the trigger point for *Tier Three – Countywide* is reached, then any unspent Affordable Housing Commuted Sums will be strategically considered for schemes, put forward by any local member in accordance with the priorities as detailed in table 2.7 by the Housing Strategy Delivery Group (or equivalent).

# Appendix One

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| Application Form |
| Applicant Name & Contact Details |  |
| Scheme Project Name |  |
| Scheme /Project Location |  |
| Planning Reference |  |
| City, Town, Community Council Area |  |
| Local Housing Market Area |  |
| Outline/ Full Scheme Details\* (delete as appropriate)All schemes must include:-* number of units,
* tenure,
* partners,
* funding sources,
* new build, conversion or regeneration Full project details should include:
* Total project costs
* All funding sources
* Funding staging details
* Project management timetable
 |  |
| Planning permission(If planning permission is yet to be granted, timescales for obtaining this need to be provided) |  |
| Expected Start & Completion dates |  |
| Signature |  |
| Position |  |
| Date |  |

Appendix Two

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| Brief outline of proposal |  |
| Proposer |  |
|  | Points Available | Points Awarded |
| Value for money | 5 |  |
| Strategic relevance | 10 |  |
| Has additional fundingstreams | 5 |  |
| Is part of a public/privatesector partnership | 5 |  |
| Has the support of local Members/residents. | 10 |  |
| Total | 35 |  |

Flowchart demonstrating consultation cascade for Affordable Housing Commuted sums

Affordable Housing Commuted Sum agreed and paid by developer in accordance with S106/Unilateral Undertaking/ Planning Permission awarded and affordable housing planning

Local Members & MAGs advised of Affordable Housing Commuted sum received and timescales for spending.

Commuted Sums considered under provisions of area cascade as per Affordable Housing Commuted Sums policy:

* Tier 1 – Town & Community Council area– First year
* Tier 2 – Local Housing Market Area– Second year
* Tier 3 – Countywide– Year three to Five

If there are less than two years to spend the money in full before being returned to the developer or a scheme becomes available that offers better value for money, the Head of Planning & Public Protection will make a decision to strategically reallocate the money under delegated powers.

Unspent money to be returned to the developer at end of designated period (usually 5 years)