From: **Derek Murphy, Cabinet Member for Economic Development**

Simon Jones, Corporate Director Growth, Environment and Transport

To: **Growth, Economic Development and Communities Committee - 16 May 2023**

Subject: **Adoption of the KCC Developer Contributions Guide**

Key decision: 23/00041

Classification: **Unrestricted**

Past Pathway of report:

Future Pathway of report: Cabinet, 29th June 2023, and Cabinet Member Decision

Electoral Division: County Wide

Summary: KCC's Developer Contributions Guide (first published in 2007), set out to promote a consistent and transparent approach across the county regarding the requirement for, and calculation of, developer contributions for KCC provided services. The revised Guide was approved for targeted public consultation by the Cabinet Member which subsequently took place between 8 December 2022 and 2 February 2023. This report sets out the details of the consultation and introduces the proposed Forthcoming Executive Decision required to adopt the revised Guide as KCC policy.

Recommendation(s):
The Cabinet Committee is asked to consider and endorse or make recommendations to the Cabinet Member on the proposed decision to:

(i) proceed with formal adoption of the updated Developer Contributions Guide;

(ii) approve the service standards and methodology for calculating development mitigation contained within;

(iii) delegate to the Director of Growth and Communities to sign off any subsequent reviews/updates and changes to approaches to contribution calculation methodologies on behalf of the County Council other than for when either a contribution rate is required to be increased beyond inflation or the introduction of a new contribution request;

(iv) delegate to the Director of Growth and Communities to take appropriate actions including, but not limited to, KCC entering into legal agreements, legal charges and negotiation of contributions for planning applications of proven viability concern, as necessary to implement this decision; and

(v) to confirm the use of the BCIS All-In Tender price index (or ROADCON where required by Public Rights of Way or Highways), with the base date for indexation set at Quarter 1 2022

as shown at Appendix 1.

1. Introduction

1.1 KCC's existing Developer Contributions Guide (first published in 2007) is now out of date and as such, the authority is at threat of increased challenges to the requests for mitigation (contributions) being sought. It is necessary to update the Guide to reflect changes in legislation, policies, priorities and costs. In addition, it is needed to provide developers and Local Planning Authorities (LPAs) with clear guidance on the likely financial costs of development so that they can be factored in as they respectively prepare Local Plans and individual planning applications.

1.2 An updated, draft Guide was produced and taken through an initial round of governance, culminating in GEDCCC (22 November 2022) and Cabinet (1 December 2022) making a recommendation to the Cabinet Member that KCC proceeds with a targeted public consultation on the updated Developer Contributions Guide. Further information pertaining to the earlier governance can be found via the GEDCCC papers and recorded minutes here.

1.3 This paper will set out the details of the consultation undertaken, the proposed 'You Said, We Did' amendments, justification behind the revised proposals, and the next steps for the project.

2. Draft Developer Contributions Guide Consultation

2.1 The draft Guide underwent targeted public consultation between 8 December 2022 and 2 February 2023 via KCC's Let's Talk page (https://letstalk.kent.gov.uk/developer-contributions-guide). In addition, the draft was directly presented to the Kent Chief Planners Group, the Kent Housebuilders and Developers Group and the Kent Planning Policy Forum. This ensured that all affected stakeholders were fully engaged with the process.

2.2 A consultation summary report has been produced and can be found at **Appendix 2** to this report. The summary report has been produced by external consultants "Lake Market Research" to provide independent factual analysis. The KCC webpage for the consultation received a total of 3,962 page views by 1,111 visitors. There were 1,095 document downloads, with the draft Guide itself being downloaded 596 times. A total of 41 individuals and organisations provided responses to the consultation including six District Councils, two Parish Councils, four Housing Associations, two Developers, three Planning Professionals and two Campaign Groups.

2.3 Consultation responses have been evaluated and categorised into general themes relating to the various subject matters contained within the draft Guide. The consultation themes, some additional comments and KCC's response to these have been captured within a 'You Said, We Did' report., The full 'You Said, We Did' report can be found at **Appendix 3**. The range of responses generally covered the following themes;

- Increases in charging rates and the introduction of new areas for contribution.
- Transparency around KCC's spending of the contributions received.
- Competing demands of the s106 pot and development viability.
- Application thresholds for seeking contributions.
- Discounts for Affordable Housing.
- County Council monitoring fee.
- Sustainable Transport.
- Methodologies for calculating contributions.

2.4 A number of amendments have been made in acknowledgement and acceptance of the comments received and are included in the proposed final version of the Developer Contributions Guide. The amended version of the Guide can be seen at **Appendix 4** of this report. Any amendments made to the Guide and responses to comments are available within the You Said,We Did document.

2.5 The main areas that required greater consideration following the consultation were application thresholds for seeking contributions; discounts for Affordable Housing; and the monitoring fee that KCC seeks for managing, monitoring and processing incoming contributions. The following paragraphs take each of these three subject matters in turn.

2.6 Application thresholds for seeking contributions. Comments have been made to consider a reduction to the current and proposed KCC threshold to seek contributions on developments only over 10 dwellings or over site sizes of 0.5Ha. The comments reflect concern that the cumulative impacts of smaller development on KCC services is not accounted for. The Guide has consequently been amended to include development of over 10 dwellings unless the Planning Authority is agreed that KCC may seek for applications of a lower number. Two planning authorities are known to have policy (with a further one planning to adopt policy) that would not support KCC seeking contributions from developments of fewer than 10 dwellings. This is within their gift as the planning authority. In addition, five LPAs are Community Infrastructure Levy (CIL) charging authorities, which seeks CIL from all developments, irrespective of size and therefore where the threshold is a moot point. The justification for retaining the threshold at 10 (or above) dwellings or a site size of 0.5Ha is twofold. 1.) Cost benefits - The cost of requesting, monitoring, and spending lower value contributions could outweigh or at least significantly reduce the income ultimately received. Analysis of KCC data regarding developments under 10 dwellings (since 2017) shows a 33% success rate in securing contributions. 2.) Smaller sites are generally less viable or developed by Small to Medium Enterprises (SMEs) and therefore may have a disproportionate financial impact upon them. It is also often the case that developments of fewer than 10 dwellings are re-purposing brown field sites. These will generally be less viable adding to concerns that seeking contributions for them would involve disproportionate levels of KCC resources required in negotiation and/or for legal dispute.

2.7 Discounts on Affordable Housing (AH). Comments were made challenging the necessity of KCC seeking contributions on AH schemes, primarily on the

premise that Affordable Housing occupants would be required to meet criteria demonstrating that they are already from the local area. As such they could not be categorised as new households placing additional impacts upon KCC services. In response, officers are of the opinion that it is not obvious that new AH does not increase pressure on local infrastructure. Some infrastructure is very specific to the immediate location, and in all cases, there is the potential for existing accommodation in the district to be backfilled by new residents in the district. Therefore, AH housing increases, directly or indirectly, pressure on infrastructure. Assessment of district/borough criteria enabling access to AH varies across the county and can include an employment link rather than existing residency within the district. Tenants may not therefore be living within the district when they access AH and are therefore additional to the district's existing population. Research undertaken across other county councils shows that the overwhelming majority do not offer discounts on AH. The Guide is, therefore, consistent with others' approach.

2.8 KCC's Monitoring Fee. The draft Guide included a proposed contribution of £500 per trigger within a s106 agreement, to cover the administrative costs of managing, monitoring, and processing incoming contributions. The legitimacy of that fee was questioned along with concerns that a "one size fits all" approach would be disproportionate for smaller development. Whilst it is accepted that the LPAs carry out their own monitoring as the statutory authority for the service contributions requested, KCC also carries out its own monitoring of development progress, housing completions/occupations and obligation triggers. This information assists with the planning and delivery of infrastructure projects in a timely manner and also with ensuring that KCC receives contributions as agreed. KCC also has a statutory responsibility to produce an annual Infrastructure Funding Statement (IFS), requiring significant record keeping. Further work has been carried out in response to consultees' feedback to re-calculate a monitoring fee. This has now been benchmarked against other council and county councils' monitoring fees. As a result, the monitoring fee has been amended to a proposed £300 per trigger for any agreement that includes contributions towards KCC infrastructure. The trigger point for collecting the monitoring fee has also been pushed back from "completion of the agreement" to "commencement of the development". This amendment is to address concerns raised in the consultation made that some applications never proceed and as such do not require monitoring. With regards to the concerns on the value being disproportionate for smaller applications it was considered that costs could be managed by reducing the number of triggers in an agreement but that the cost of monitoring is still required to be covered irrespective of the size of the application.

2.9 Any changes that have been made to the Guide in response to the consultation have been discussed and agreed with the individual KCC service areas.

2.10 The KCC Development Investment Team has also committed to arranging further meetings with officers from some Planning Authorities who sought further information regarding the methodologies for calculating certain contributions.

2.11 Following the Cabinet Committee's discussion and recommendations, the Guide will be presented to Cabinet on 29 June 2023, ahead of a proposed decision to adopt by the Cabinet Member for Economic Development on behalf of the council.

3. Financial Implications

3.1 KCC seeks developer contributions to secure financial, in-kind and land contributions towards increasing infrastructure capacity, to support services for which it has responsibility to provide. The Development Investment Team within Growth & Communities deals primarily with the seeking of contributions for Education, Waste, Communities and Adult Social Care, with Highways & Transportation and PRoW leading their respective areas. The calculations for the updated costs reflect the current needs of the various KCC service areas. The detailed methodologies and breakdowns of costs are explained within the individual KCC service area appendices to the main Developer Contributions Guide.

3.2 Since 2014 KCC has secured a total of £325,452,643 in contributions from developers towards specified services. This figure represents a cumulative achievement rate of 97% against KCC's requests for total contributions from developers. These figures are exclusive of the value of land transferred and Highways Section 278 & 38agreements which would account for significant financial uplift. Whilst, this is very positive for infrastructure provision, it is not achieved without significant challenges and is part of a bigger picture. In this context the Growth and Infrastructure Framework (GIF) has projected that by 2031 (2011 - 2031) Kent will be home to 178,600 new homes and circa 400,000 new residents. The infrastructure required to support this growth is forecast (2017 – 2031) to be £16bn+ with £2.8bn attributed to infrastructure to be delivered by KCC. With regards to KCC's investment and based on total funding identified, £1.6bn is expected to be delivered by development contributions. There remains a significant risk that such funding may not materialise to the amount or within the timescales required.

3.3 There are many factors that affect the level of financial contributions that KCC receives and those originally predicted in the GIF. Housing delivery within many districts has not met with the targets originally proposed in the 2017 GIF and this has a corresponding impact on the level of additional mitigation required and the overall financial levels of mitigation received. Viability negotiations also have a significant impact where, often through appeal, planning applications are consented and not required to be fully policy compliant or provide the levels of mitigation sought by KCC.

3.4 There are additional challenges to secure developer contributions within the five Planning Authorities within the county operating with a Community Infrastructure Levy. These challenges are more acutely felt where KCC is required to submit applications for infrastructure funding via Planning Authority governed bidding processes.

3.5 Excluding the accountable Head of Service (whose salary is paid from a different budget line) the staffing revenue implications of operating the Development Investment Team (DIT) that secures development contributions is

£410,995.89 (net cost) per annum. The team is funded through KCC's core revenue budget, and through income. The team demonstrates significant value for money operating at just 0.9% of the £47m developer contributions received last year. The £300 monitoring fee and other income revenue secured through financial undertakings to cover officer time to negotiate and review s106 agreements play an additional but important part in helping to reduce those revenue costs.

3.6 The proposed Record of Decision confirms the use of the BCIS All-In Tender price index, with a base date of Q1 2022. This date is fixed to that time due to the publicly consulted Guide containing contribution figures calculated at that point. The index reflects the current position that most contracts KCC awards for infrastructure delivery will be through a tendered procurement process.

3.7 The process of updating the Guide included updating the methodologies and costs associated with current delivery models. Some areas such as Adult Social Care, Community Learning and Integrated Childrens Services are now delivered through a combination of outreach and fixed infrastructure delivery and the updated Guide costs reflect that change. Overall, the newly proposed costs per new dwelling are comparable (within 3%) to those being sought prior to the review of the Guide and adjusted for inflation only.

4. Legal Implications

4.1 The Guide has undergone a review by Invicta Law, Legal Counsel and input from a planning consultant, in conjunction with internal and stakeholder engagement to reduce the likelihood of challenge to its contents.

4.2 With the existing guide being out of date, proceeding further without an up-to-date guide presents reasons for challenge, both from the local planning authorities and developers. This Guide sets out the reasons for seeking contributions (within the confines of legislation), the policy/statutory status of KCC's services, robust methodologies, and costs. It enables KCC to justify its s106/CIL requests, as well as providing a clear basis for setting out the county council's requirements within emerging local plans.

4.3 Options to include additional KCC areas were also considered. In particular, Arts & Culture and Resilience & Emergency were assessed. Both officer and external legal opinion concluded that there was at this time an insufficient evidence base to meet the CIL tests set out in Regulation 122 of The Community Infrastructure Levy Regulations (2010) to seek for those areas. Whilst it is recognised that there are significant budget demands for the County Council, the introduction of non-compliant areas would undermine the integrity of the Guide's robust legal standing. Meeting the legal tests of 'reasonable and proportionate' mitigation have to be considered whilst balancing the demands for a finite pot of funding available from development. County Council services form only one area of mitigation required. Contributions are also requested for a number of other non-county areas such as: affordable housing, open space and play, urban place-making, utility infrastructure, health, air quality improvements, carbon offsetting and nutrient neutrality.

4.4 The Levelling Up and Regeneration Bill continues to provide an evolving and complex context to developer contributions. A briefing to this committee's members on the new Infrastructure Levy that will come forward as part of that Bill took place on 19 April 2023.

5. Equalities Implications

5.1 There are no identified equality issues arising from the process of securing developer contributions or updating the Guide. KCC services will have appropriate operational provision within their individual service delivery plans/strategies for the planned spend of contributions. An Equality Impact Assessment for the draft Guide has been produced and is available at **Appendix 5** to this report.

6. Other Corporate Implications

6.1 Providing updated guidance of developer contributions at this time will assist in reducing delays to critically needed infrastructure identified within the Growth and Infrastructure Framework, reducing the need for protracted negotiations with the local planning authorities and/or developers.

7. Governance

7.1 The reported item is to be taken to the Cabinet with a view to the Cabinet Member for Economic Development making a formal decision to adopt the Guide as policy. The draft version of the Guide had previously been presented to GEDCCC for approval of the now completed public consultation.

7.2 The proposed decision would provide delegated authority to the Director of Growth and Communities for two areas;

i.) to sign off any subsequent reviews/updates and changes to approaches to contribution calculation methodologies on behalf of the County Council other than for when either a contribution rate is required to be increased beyond inflation or the introduction of a new contribution request.

ii.) to take appropriate actions including, but not limited to, KCC entering into legal agreements, legal charges and negotiation of contributions for planning applications of proven viability concern, as necessary to implement this decision.

8. Conclusions

8.1 A decision to adopt the Kent Developer Contributions Guide would deliver a named objective of KCC's strategic plan "Framing Kent's Future". Updating the Guide is appropriate and relevant at this time, providing developers and Local Authorities with a clear understanding of the likely costs associated with mitigating development on KCC services.

9. Recommendation(s)

10.1 Recommendation(s):

The Cabinet Committee is asked to consider and endorse or make recommendations to the Cabinet Member on the proposed decision to:

(i) proceed with formal adoption of the updated Developer Contributions Guide;

(ii) approve the service standards and methodology for calculating development mitigation contained within;

(iii) delegate to the Director of Growth and Communities to sign off any subsequent reviews/updates and changes to approaches to contribution calculation methodologies on behalf of the County Council other than for when either a contribution rate is required to be increased beyond inflation or the introduction of a new contribution request;

(iv) delegate to the Director of Growth and Communities to take appropriate actions including, but not limited to, KCC entering into legal agreements, legal charges and negotiation of contributions for planning applications of proven viability concern, as necessary to implement this decision; and

(v) to confirm the use of the BCIS All-In Tender price index (or ROADCON where required by Public Rights of Way or Highways), with the base date for indexation set at Quarter 1 2022

as shown at Appendix 1.

11. Background Documents

Appendix 1, Proposed Record of Decision
Appendix 2 Developer Contributions Consultation Report.pdf (kent.gov.uk)
Appendix 3 You Said We Did.pdf (kent.gov.uk)
Appendix 4, Proposed KCC Developer Contributions Guide
Appendix 5, Equalities Impact Assessment: Kent Developer Contributions Guide

The Kent & Medway Growth and Infrastructure Framework can be found by following the link Growth and Infrastructure Framework (GIF) - Kent County Council

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