

From: Derek Murphy, Cabinet Member for Economic Development

Simon Jones, Corporate Director Growth, Environment and Transport

To: Growth, Economic Development and Communities Cabinet Committee, 22 November 2022

Subject: Developer Contributions Guide

Classification: Unrestricted

Past Pathway of report: N/A

Future Pathway of report: Cabinet, 1st December 2022

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 the calculation of developer contributions for KCC-provided services. Although still relevant in many areas, it is necessary to update the Guide to reflect changes in legislation, policies, priorities, and costs. This report explains how this is to be achieved.

Recommendation(s):

The Committee is asked to consider the draft Guide, provide any comments or observations on its content and to recommend to the Cabinet Member that KCC proceeds with a targeted public consultation on the updated Developer Contributions Guide as attached at Appendix A.

1. Introduction

- 1.1 Since 2014, KCC has secured a total of £325,452,643 in financial 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 agreements). Whilst, this is very positive for infrastructure provision, it is not achieved without significant challenges.
- 1.2 Members of the GEDCCC receive quarterly performance reports demonstrating the finance secured for each of the KCC service areas, from developer contributions.
- 1.3 Taking a transparent approach to demonstrate how and why the County Council seeks developer contributions through publication of the Developer Contribution Guide is essential to securing and evidencing our funding and infrastructure requests. This is of increasing importance as the local government funding landscape becomes more challenging.

2. Developer Contributions Guide

- 2.1 Under the Town and Country Planning Act (1990) and Regulation 122 of the Community Infrastructure Levy, development contributions may be sought to fund the infrastructure required to deliver sustainable growth and make proposal(s) acceptable in planning terms. KCC's Developer Contributions Guide outlines the County Council's approach to developer contributions in this context and, in accordance with the legal and planning policy background, sets out the standard requirements and methodologies employed in the calculation of the contributions, on a service-by-service basis.
- 2.2 First published in 2007, the guide sets out to promote a consistent and transparent approach across the county, regarding the requirement for developer contributions towards KCC provided services and statutory obligations. Although still relevant in many areas, it is necessary to update the guide to reflect changes in legislation, current policies, priorities and costs.
- 2.3 Good infrastructure is vital to creating sustainable communities, and developer contributions play an integral role in this. The contributions help to fund infrastructure to ensure that the demand from new housing growth is not at the expense of the infrastructure and services available for existing communities.
- 2.4 Achieving sustainable development means that the planning system has three overarching objectives: economic, social, and environmental. The proposed guide sets out contributions which may be required by the County Council to support growth and mitigate any adverse impacts, to ensure that development meets the needs of the present, without compromising the ability of future generations to meet their own needs and as such, is sustainable.
- 2.5 Planning obligations and contributions from Section 106 agreements and the Community Infrastructure Levy (CIL) play a key part in the process of delivering sustainable development, ensuring that infrastructure is delivered in a timely manner, is appropriately situated and accessible. Put differently, planning obligations are needed to fund infrastructure to support growth.
- 2.6 The proposed guidance does not specify every type of contribution that may be required to make development acceptable in planning terms. It provides an overview of obligations which may be sought by KCC as part of the planning process, where necessary. Areas of KCC infrastructure covered, in alphabetical (rather than priority) order, are:
 - Adult Social Care (ASC)
 - Community Learning and Skills
 - Education: Early Years Education and Childcare Provision
 - Education: Primary and Secondary Education
 - Education: Special Educational Needs & Disabilities (SEND)
 - Heritage and Archaeology – Archives & Education
 - Flood and SUDs
 - General Transfer Terms – School Sites
 - Highways and Transportation
 - Integrated Children's Services – Youth Services/Early Help Service
 - New School Site Sizes

- Public Rights of Way (PRoW)
- Waste Disposal and Recycling

Historically, KCC has sought for Highways, Education, Libraries, Community Learning, Youth and Adult Social Services, with the majority of contributions split between Highway and Education. This proposed guide sees the inclusion of Special Educational Needs and Disabilities and the formalisation of the request for waste infrastructure.

- 2.7 Other service areas considered for inclusion in the guide are Arts & Culture, Flood & SUDS, Resilience & Emergency and Heritage & Archaeology. Contributions towards the work of the Heritage & Archaeology and Flood & SUDS services are included but will be sought for larger developments such as Garden Communities and/or where developers agree that KCC is the best option as a service provider. It is intended that Arts & Culture and Resilience & Emergency are not included in the guide at this time, largely due to there being an insufficient evidence base to meet the CIL tests set out in Regulation 122 of The Community Infrastructure Levy Regulations (2010).
- 2.8 The document echoes and supports the findings of the Kent and Medway Growth and Infrastructure Framework (GIF), last published in 2018. The GIF is a comprehensive document outlining the scale of growth and highlighting infrastructure priorities and challenges for Kent and Medway. The GIF outlined a projected funding gap of £3.96bn. To assist in bridging the gap, the updated guide demonstrates to how Kent County Council will work with Local Planning Authorities and developers through early engagement in the planning process. The guide will be linked closely to the Infrastructure Mapping Platform as it emerges and is updated. Similarly, the guide will need to have its charging rates checked annually and evidenced rationale revisited at regular intervals by each of the KCC services that seek developer investment, to ensure KCC charges continue to reflect real costs and evolving service delivery costs.
- 2.9 Taking a transparent approach and demonstrating clearly how and why the county council will seek contributions removes significant risks that requests would be subject to challenge from developers and/or Planning Authorities. Challenges to contribution requests create significant resource implications for the county council, both through the increased engagement required in the planning appeal process itself and the ability of KCC services to deliver their statutory obligations and necessary infrastructure resulting from development, should the contributions not be secured.
- 2.10 The launch of the government's White Paper¹- Planning for the Future (August 2020) set out its intention to reform the process for the collection of funding for infrastructure, removing CIL and s106 agreements, with the implementation of an Infrastructure Levy. Updating the guide at this time will provide a helpful reference to demonstrate county's requirements to mitigating the impacts of growth.
- 2.11 A formal, targeted, public consultation with identified stakeholders including district, borough and parish councils, developers and housebuilders is

¹ now a considerably reworked Levelling Up and Regeneration Bill – currently at Committee Stage

proposed. Any individuals expressing an interest in such matters will also be contacted via KCC's public consultation team. The guide has been presented to the Kent Planning Officers Group and will be presented to the Kent Housebuilders and Developers Group and the Kent Planning Policy Forum. This will ensure that all affected stakeholders are fully engaged with the process of updating the guide.

2.12 Subject to the decision of the Committee, the guide will be presented to Cabinet on 1st December before being published for targeted, public consultation on 6th December 2022, for a period of eight weeks.

2.13 Following the targeted public consultation and any necessary subsequent amendments, the intention is that the guide will be brought back to this Committee in advance of a key decision by the Cabinet Member for Economic Development that KCC adopt the Guide. Local Planning Authorities will be encouraged to adopt this document as a relevant supplementary planning document (SPDs) and give this guidance the appropriate weight when determining planning applications.

3. Financial Implications

3.1 KCC seeks developer contributions to secure financial 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.

3.2 As stated above, since 2014 KCC has secured a total of £325,452,643 in contributions from developers towards specified services. In this context the Growth and Infrastructure Framework 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, although there remains a significant risk that such funding may not materialise to the amount or within the timescales required.

3.3 Whilst development contributions form part of a bigger picture, they significantly reduce the impact of additional demand from development on KCC's service providers.

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 Proceeding further without an up-to-date guide presents reasons for challenge, both from the local planning authorities and from 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 The Committee is advised that contributions should be sought only for the capital cost of infrastructure and that the revenue costs of staffing are rarely acceptable. Requests must also demonstrate clearly whether there is deficit capacity in the service.

5. Equalities implications

- 5.1 There are no identified equality issues arising from the process of securing developer contributions or updating the guide, although KCC services will have appropriate operational provision within their individual service delivery plans/strategies. An Equality Impact Assessment for the draft Guide describes this further and is available for consideration at Appendix B 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 GIF, reducing the need for protracted negotiations with the local planning authorities and/or developers.

7. Governance

- 7.1 The report and item are to be taken to Corporate Board, the Growth, Economic Development and Communities Committee and Cabinet prior to targeted, Public Consultation. The Guide would then be taken back through the same process for a decision to adopt this Guide as policy. Earlier development of the Guide has been considered at a number of KCC's Infrastructure First Groups, chaired by the Leader and attended by a number of Cabinet Members and Directors from across the authority.

8. Conclusions

- 8.1 Updating of the Guide is appropriate and relevant at this time and should proceed to targeted, public consultation at the earliest opportunity.

9. Recommendation(s)

Recommendation(s):

The Committee is asked to consider the draft Guide, provide any comments or observations on its content and to recommend to the Cabinet Member that KCC proceeds with a targeted public consultation on the updated Developer Contributions Guide as attached at Appendix A.

10. Background Documents

- 10.1 Appendix A : Draft Developer's Guide

- 10.2 The existing (2007) Development Contributions Guide:
<https://democracy.kent.gov.uk/documents/s3003/Appendix%20-%20Guide.pdf>
- 10.3 The Kent & Medway Growth and Infrastructure Framework: [Growth and Infrastructure Framework \(GIF\) - Kent County Council](#)
- 10.4 Developer's Guide Equality Impact Assessment:
<https://democracy.kent.gov.uk/documents/s115084/KentDeveloperContributionsGuideEqIA.docx.pdf>

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