From: Mark Dance, Cabinet Member for Economic Development

Barbara Cooper, Corporate Director of Growth, Environment & Transport

To: Growth, Economic Development and Communities Cabinet Committee – 9 May 2019

Subject: Developer Contributions

Classification: Unrestricted

Past Pathway of Paper: N/A

Future Pathway of Paper: N/A

Electoral Division: All Divisions

Summary: This report explains the background to developer contributions, how contributions are calculated and collected for the Council and how these are then used.

Recommendation: Cabinet Committee is asked to note the details of this report

1. Context

1.1 The Growth and Infrastructure Framework (GIF) has projected that by 2031 (2011 - 2031) Kent will be home to 178,600 new homes and nearly 400,000 new people. The infrastructure required to support this growth is forecast (2017 – 2031) to cost over £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 developer contributions although there remains a significant risk that such funding may not materialise to the amount or timescales required.

1.2 Since 2014 KCC has secured a total of £214,838,528 in contributions for our service providers from developers with a cumulative achievement rate of 98% against asks for total contributions. However, this is not achieved without significant challenges as outlined later in this report.

2. Introduction to Developer Contributions

2.1. When considering whether to grant planning permission for new housing Local Planning Authorities are required to weigh up the effects the development would have on the physical environment as well as assessing the impact on service provision and public infrastructure.

2.2. Where there is not sufficient capacity in local infrastructure to accommodate the additional demand and a planning authority decides that without adequate capacity it would not grant planning permission the development can mitigate this through a planning obligation, also known as a s106 agreement.

2.3. The common uses of s106 agreements are to secure affordable housing and to secure financial contributions from the developer to provide infrastructure. The s106 agreement is a formal document, a deed, which states that it is an obligation for planning purposes, identifies the relevant land, the person entering the obligation; it also becomes a land charge and the relevant local authority can enforce against it as a legal contract. A s106 obligation can:

- Restrict the development or use of the land in a specified way
- Require specified operations or activities to be carried out in, on, under or over the land
- Require the land to be used in a specified way; and or
- Require a sum or sums to be paid to a local authority on a specified date or dates or periodically

2.4 There are three legal tests for determining when a s106 agreement can be used, the s106 must be:

- Necessary to make the development acceptable in planning terms
- Directly related to the development; and
- Fairly and reasonably related in scale and kind

2.5. Developer contributions are most commonly used by Kent County Council to secure financial contributions towards increasing infrastructure capacity to support services which it has a responsibility to provide. The County Council seeks to secure contributions towards the following services:

- Adult Social Care
- Community Learning
- Highways
- Libraries
- Primary & Secondary Education
- Youth Services

3. How the impact of development is calculated

3.1. Since 2006 a total of 1,368 S106 agreements relating to KCC services have been completed as part of planning permissions for housing development across the County. Contributions cannot be sought from applications of 10 dwellings or fewer because of the existing regulations but for all other applications an assessment of the increased demand on each individual service is undertaken.

3.2. S106 contributions can only be used towards capital costs and must be used towards a project geographically close to the housing development specifically to increase capacity for that particular service. In areas where new build, physical expansion or refurbishment of an existing facility, which will

provide additional capacity is envisaged, developers are requested to contribute proportionately to the cost (often the whole cost) of the capital scheme e.g. a school. These schemes may incorporate other services through co- location e.g. a ‘community hub’.

3.3 In some cases contributions are also sought towards capital costs for non-property related items such as book stock or equipment to increase digital access for libraries, or equipment such as IT for CYPE in areas where physical expansion of existing facilities is not planned or the existing services can, with change, serve more people within existing facilities.

3.4. Contributions for KCC services to provide additional capacity are calculated by multiplying 1) the number of proposed housing units by the 2) the cost/contribution per unit - which is a) the estimated user demand for a particular service arising per unit (in the case of Education the pupil product ratio (PPR) multiplied by b) the capital cost per user.

3.5. For example, in the case of education, the Commissioning Plan for Education Provision in Kent 2019 – 2023 determines the demand for school places within a specific area. Primary and secondary costs per pupil are based on the average cost of building or extending schools in Kent. So, for new build of a primary school:

contribution per house = capital cost per pupil (£16,198) x relevant pupil product ratio (0.28).

Therefore, for a development of
1500 units with a cost per house of £4,535 (£16,198 x 0.28) the contribution for primary education will equate to £6,802,500.

3.6. In the case of Library contributions (book stock for example) the average number of people living in a home is 2.4; with 13.28% of residents being active borrowers a development of 1000 homes is calculated to result in 320 potential new borrowers. The annual number of issues per borrower is 28.8: using these statistics it can be determined that the cost of providing adequate stock for every new dwelling is £48.02.

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4. Community Infrastructure Levy (CIL)

4.1. The Community Infrastructure Levy (CIL) is a tariff-based system introduced by Government in 2010 intended to largely replace the existing s106 regime. Under CIL the Local Planning Authority sets a contribution rate per m^2 which developers are obliged to pay without negotiation. The tariff is administered by the district authority which can choose to allocate the receipts to related infrastructure; under CIL the County Council will bid for funding from the district CIL funds rather than seeking contributions from individual planning

applications. The districts which have adopted CIL are Dartford, Sevenoaks, Folkstone and Hythe and Maidstone, although even where CIL has been introduced s106 agreement are still sometimes used for larger sites. The Government announced a review of how CIL operates in the Autumn budget of last year with consultation closing 31st January this year. Further announcement as to the outcome is expected later this year. See also under 7. 'Challenges to securing development contributions'.

5. Highways s278 agreements

5.1 Highways s278 agreements allow developers to enter into a legal agreement to make alterations or improvements to a public highway as part of a planning application. Therefore, Highways works associated with new development are largely subject to s278 agreements and provided as direct works by the developer rather than funded through s106 agreements. Therefore, whilst they provide for the delivery of essential highways infrastructure, the figures are exclusive of s278 agreements (see below).

6. Success to date

6.1. KCC Performance Indicator ED08 *'Developer Contributions Secured Against Total Contributions Sought'* for the financial year ending March 2019 shows an achievement rate of 98% against asks for total contributions. The total cumulative achievement rate since 2014 is also 98% (see appendix 1 - £ agreed / sought by District). Since 2014, the County Council has secured a total of £214,838,528 in contributions for our service providers from developers (see appendices 2 - £ agreed by District & 3 - £ agreed by service). In addition to these financial contributions S106 agreements have also secured the ability for KCC services to occupy or use facilities provided in some of Kent's largest new communities, including for example Chilmington Green in Ashford. These figures are exclusive of the value of land (school sites for example) which have been transferred to the County Council at nil consideration. Also, the figures are exclusive of Highways s278 agreements (see above) and services for which the County Council does not currently seek to secure contributions such as waste management.

6.2. Because the County Council is not the Local Planning Authority for residential development it does not have the power to obligate developments to contribute financially; this rests with the district authorities. In order to secure contributions, the County Council must set out evidence of their need and make a clear case that the development should not proceed without mitigation.

6.3. Contributions are secured at the point that planning permission is granted, but the contribution payment is tied to the occupation of the development; typically, a larger development will have multiple payment points within its build-out programme, known as trigger points. The lag between when planning permission is granted and the time it takes for new homes to be built and occupied means that contributions secured today may not be paid for several years. This also means that there is little control over when this funding is received; this is dependent upon the housing market. In this respect we work closely with Finance to forecast cash flows and with Infrastructure regarding school build and delivery.

6.4. During the financial year ending March 2019 contributions of £36.27m were secured which will become payable in the future.

7. Challenges to securing developer contributions

7.1. A fundamental requirement of s106 contributions is that they are used towards capital projects and cannot be applied as revenue. For many services this means that the true impact of additional demand from development can never be fully recovered through s106, which is also particularly important as some services providers move increasingly towards revenue-based service delivery models. Additionally, s106 monies cannot be used towards replacement or maintenance of existing assets, running costs or staffing. All projects where s106 monies are applied must demonstrate that they are providing additional capacity.

7.2. Development viability is the most common reason that the full amount requested by the County Council is not secured, this is when the developer makes a case to the Planning Authority that they cannot afford all of the requests being made of them, planning regulations allow a prioritisation of requests to then take place by the Planning Authority. In such cases and where appropriate KCC will seek to mitigate impact through a number of potential measures including: requesting viability assessments and/or development appraisals be undertaken to assess viability, considering deferred or overage payments and, where appropriate, shared use of space (community hub for example).

7.3. Regulations relating to s106 agreements have become more complex in recent years; regulation 123 of the Community Infrastructure Levy Regulations came into force in April 2015; the effect of this regulation is to limit to just 5 the number of s106 agreements which can be pooled together to finance an individual project.

7.4. Previously the County Council was able to secure contributions when it demonstrated they were required and then fund the infrastructure when it was received. For expensive projects such as secondary schools (£20m+) or those which have a wider geographical spread such as a library project, several contributions would be pooled together.

7.5. Now the County Council must explicitly state where the money will be spent before a S106 can be signed and only five developments can contribute to a project. If there are ten developments in one town where a new school is planned, the effect of the regulations mean that the County Council can only seek contributions from five of the developments.

7.6. This regulation was introduced by Government to encourage districts to move towards charging the Community Infrastructure Levy; however, it has had a significant impact on authorities such as County Councils that deliver strategic infrastructure. The County Council has successfully limited the impact of the pooling restriction through delivering projects in multiple phases.

8. Looking Ahead

8.1 Kent has an increasingly growing population and service providers continue to pursue projects to meet future demand across the whole of the county, including funding and provision at major development projects such as Ebbsfleet, Chilmington Green and Otterpool Park. In this respect a priority will be to work to maximise use of KCC's assets and explore all opportunities to maximise outcomes for the people and communities of Kent - including exploring more innovative approaches to meet this future need, mitigate additional revenue pressures and ensure sustainability in the future.

8.2 However, the system remains imperfect currently and presents a number of significant challenges, as outlined above, including viability and the restrictions of the current Community Infrastructure Levy Regulations. We are and will continue to make representations and lobby Central Government in this respect towards implementing changes to current funding arrangements in the future. We are in the process of revising KCC's 'Guide to Developer Contributions' which outlines our approach and sets out the methodologies for calculating contributions. We are currently awaiting the latest announcement from Central Government (expected later this year) regarding revisions of the existing CIL regulations and the revised guide will be prepared for consultation shortly thereafter.

9. Recommendation

Recommendation: Cabinet Committee is asked to note the details of this report

10. Appendices and Background Documents:

Appendix 1: Graph to show ratio agreed/sought by District.
Appendix 2: Graph to show contributions secured by District.
Appendix 3. Graph to show amount secured by service.

11. Report Author

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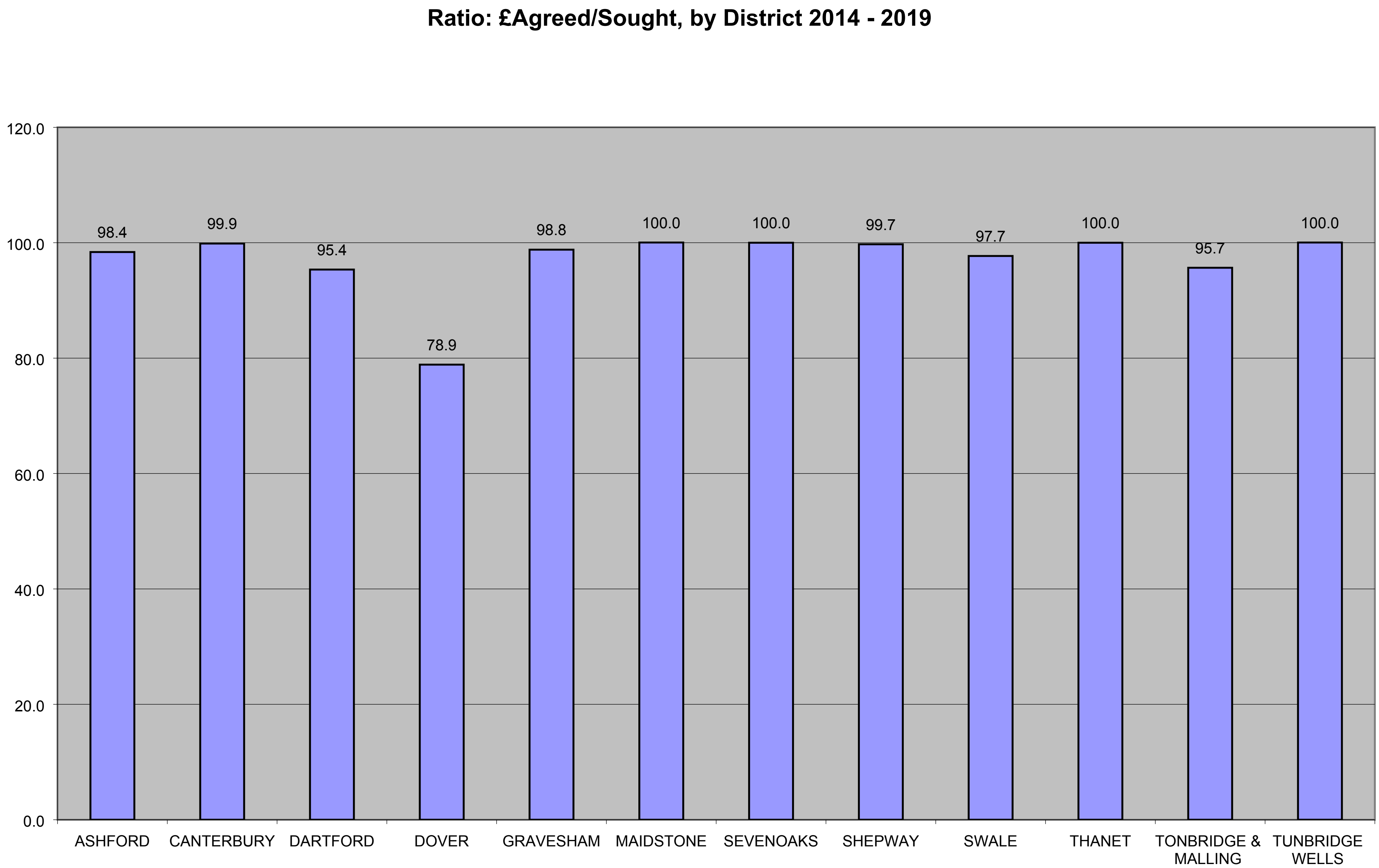
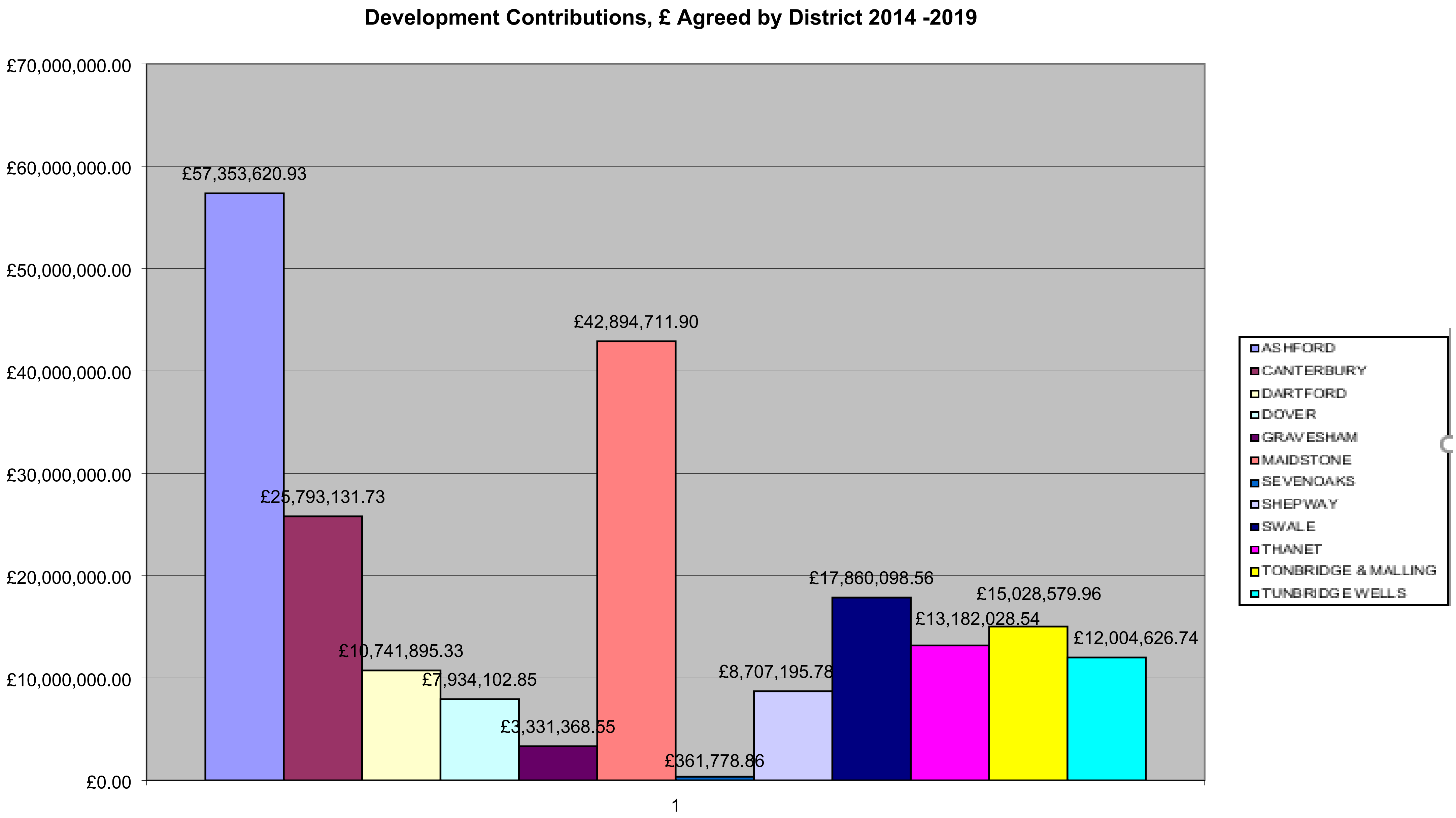
Appendix 1


Ratio: £Agreed/Sought, by District 2014 - 2019
120.0
100.0
80.0
60.0
40.0
20.0
0.0
98.4
99.9
95.4
78.9
98.8
100.0
100.0
99.7
97.7
100.0
95.7
100.0
ASHFORD
CANTERBURY
DARTFORD
DOVER
GRAVESHAM
MAIDSTONE
SEVENOAKS
SHEPWAY
SWALE
THANET
TONBRIDGE & MALLING
TUNBRIDGE WELLS

Appendix 2



Development Contributions, £ Agreed by District 2014 -2019
£70,000,000.00
£60,000,000.00
£50,000,000.00
£40,000,000.00
£30,000,000.00
£20,000,000.00
£10,000,000.00
£0.00
£57,353,620.93
£25,793,131.73
£10,741,895.33
£7,934,102.85
£3,331,368.55
£42,894,711.90
£361,778.86
£8,707,195.78
£17,860,098.56
£13,182,028.54
£15,028,579.96
£12,004,626.74
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ASHFORD
CANTERBURY
DARTFORD
DOVER
GRAVESHAM
MAIDSTONE
SEVENOAKS
SHEPWAY
SWALE
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Appendix 3

Amount agreed per service 2014 - 2019