

**REPORT TO: PLANNING & TRANSPORTATION COMMITTEE – 29 APRIL 2002**

**REPORT ON: FUNDING OF OFF-SITE INFRASTRUCTURE**

**REPORT BY: DIRECTOR OF PLANNING AND TRANSPORTATION**

**REPORT NO: 133-2002**

## **1 PURPOSE OF REPORT**

- 1.1 This report seeks approval from the Committee to allow financial contributions received from developers for off-site infrastructure improvements to be used in future years. The purpose of this will be to finance improvements or replacement of infrastructure beyond a development site in response to the concerns and expectations of users and occupiers of the development which have been generated as a result of the development.

## **2 RECOMMENDATIONS**

- 2.1 It is recommended that Committee:
- a Instructs the Director of Finance to incorporate the capital receipts from developers into the capital resources of the Council and to make provision in future capital programmes for off-site infrastructure improvements.
  - b Instructs the Director of Planning and Transportation to include a policy statement on the use and intention of such capital receipts in the revised Dundee Local Plan and to prepare supplementary guidance thereafter.
  - c Instructs the Director of Planning and Transportation to consider the requirements for potential off-site works and therefore to seek developer contributions as part of the consideration of planning applications.

## **3 FINANCIAL IMPLICATIONS**

- 3.1 There are no financial implications for the Council arising from this report.

## **4 LOCAL AGENDA 21 IMPLICATIONS**

- 4.1 The use of capital receipts from developers for infrastructure improvements has the potential to address several of the Council's key themes by contributing to the creation of safe, clean, pleasant environments; ensuring that local needs are met locally; improving access to facilities and services; and assisting in creating places and spaces which combine meaning, beauty with utility.

## **5 EQUAL OPPORTUNITIES IMPLICATIONS**

- 5.1 The use of capital receipts from developers for infrastructure improvements has the potential to make a positive contribution to the improvement of access to facilities for all.

## 6 BACKGROUND

- 6.1 As part of the development process it is normal for the developer to meet the capital cost for infrastructure such as roads, footways and street lighting within the site area of the development. As a consequence of a condition to the planning permission or road construction consent other facilities such as for recycling or dropped kerbs may also be provided at the developer's expense. Subject to these elements meeting the standards required by the Council, they may be adopted as public assets and maintained thereafter by the Council.
- 6.2 In some instances the impact upon the infrastructure extends beyond the boundaries of the development site. This impact most commonly, but not exclusively, results from residential development. For instance, whilst the street lighting within a development may meet modern requirements and the expectations of residents, the quality of lighting in surrounding adopted streets which connect the development to shopping or schooling may be out of date and substandard. Consequently, residents look to the Council to improve such substandard infrastructure or to provide missing elements such as dropped kerbs.
- 6.3 The standard of the infrastructure in many of these adopted streets may be adequate for the previous use of the development site or for surrounding land uses like commercial or industrial activities. Therefore, the Council will have neither prioritised improvements nor allocated resources to such works. Meeting the demand for improved infrastructure puts an additional burden on the resources of the Council and raises expectations which cannot always be met.
- 6.4 In these instances, where it can be recognised that the need for infrastructure improvement or provision in a surrounding area is as a result of the development of a site within the area, it is suggested that it would not be unreasonable to expect the development to make a contribution to these improvements. It is not the Council which is instigating the need on behalf of the community.
- 6.5 The principle of a development contributing to the cost of improvements in the surrounding area necessitated in some part by the development may be accepted. However, the scope, the level and the purpose of any contribution needs to be clearly defined and set out as Council policy within the Statutory Development Plan.
- 6.6 The impact of new development on local infrastructure provision can be felt from both greenfield and brownfield developments. Often this impact is not immediately felt or readily appreciated. The use of Section 75 agreements has tended to focus upon the provision of large-scale facilities or infrastructure rather than smaller but often no less significant elements such as off site street lighting and dropped kerbs. The use of Planning Agreements has been the subject of some debate in Scotland and in England which was stimulated by the findings of the Nolan Committee in its report "Standards of Conduct in Local Government" 1997. In 2001, the Scottish Executive published its findings into "The Use and Effectiveness of Planning Agreements" while the recently published green paper on the planning system in England and Wales also looked at the future role of such agreements.
- 6.7 Both papers recognised the importance of funding measures to mitigate any adverse impact resulting from development or to enable development to go ahead. Both support the Planning Agreement as the enabling vehicle but recognise that the

system and the way it operates needs to be changed. There is common acknowledgement that such agreements should be linked and given context through the plan-making process of local plans, should be clearly justified to deliver planning and transport objectives and that the system should be transparent. The Scottish research suggests a need to establish requirements at an early stage in development proposals and the need for a framework which is easily understood and effective in terms of being quick, inexpensive and simple. The English green paper goes further in proposing a system of tariffs levied within a framework provided by primary legislation, national guidance and local plans. The Scottish research advocates new legislation to provide funding mechanisms and delivery mechanisms such as "infrastructure trusts". While the green paper presages government action in this area in England and Wales, the Scottish Executive has given no indication that it intends to do likewise on the basis of its research document.

6.8 Nevertheless, the green paper and research document confirm that planning agreements have a role to play in securing funds for meeting infrastructure costs. Planning Agreements entered into by the Local Planning Authority under Section 75 of the Town and Country Planning (Scotland) Act 1997 are used to facilitate development by enabling issues to be dealt with that would otherwise have meant that planning permission could not have been granted. They can be used to secure "Planning Gain" also. The Scottish Executive in its Circular 12 of 1996 has identified a number of criteria which planning agreements should meet:

- a planning purpose (ie the agreement should relate to the use and development of the land);
- b relationship to proposed development (ie the agreement should relate to the consequences of the proposed development);
- c scale and kind (ie the requirements of the agreement should be appropriate to the consequences of the proposed development and not include requirements the need for which does not wholly and substantially arise from the proposed development);
- d reasonableness (ie is the agreement reasonable in the circumstances).

Adherence to these criteria would serve to resist any accusation that developer contributions to meeting off-site infrastructure costs represent a development tax.

6.9 The use of planning agreements to obtain benefit for the community at large such as improved street lighting, dropped kerbs or recycling facilities should be possible subject to meeting the criteria listed above. The inclusion of a policy framework within the local plan would ensure that contributions to infrastructure negotiated under Section 75 were treated as material considerations in any planning application and would be relevant to whether planning permission were granted. Also, it would be consistent with the emerging consensus on how a system of planning agreements should be operated. The recently approved Finalised Dundee and Angus Structure includes Implementation Policy 1 : Planning Agreements states that Local Plans will identify where the use of Planning Agreements may be appropriate to secure developer contributions towards the provision of infrastructure, community facilities and services. With the review of the Dundee Local Plan underway, the opportunity to address the issue is available.

- 6.10 The use of planning agreements can address the issue of providing the funding mechanism for infrastructure but there remains the need for a delivery mechanism which also must meet the criteria set down by the Scottish Executive. The English green paper recognises that, at present, obligations under planning agreements can fall unequally and unfairly on some developments and not on others. For example, a small development of 5 or 6 houses can lead to a demand for infrastructure improvement well in excess of its own significance and it would be unreasonable and unfair to demand that the full cost was met from this development particularly if it were the first of several potential developments in the area. A mechanism for determining the level of contribution requires to be designed and, if the proposals of the English green paper are followed, set out in the local plan. The Scottish Executive research paper suggestion of the use of "infrastructure trusts" as a means of delivery may provide a means of avoiding unequal or unfair contribution by the pooling of contributions. However, trusts have a legal meaning which may not be appropriate and a more simple financial mechanism may be available. Whatever mechanism is used it must allow the transfer of funds from one financial year to another.

## **7 CONCLUSION**

- 7.1 There is frequently a need for the Council to fund infrastructure either as a result of development or in order to facilitate it. It seems reasonable for the Council to seek recompense where the Council is not directly responsible for instigating the need. This is an issue which has been recognised on both sides of the border where planning agreements are recognised as the most appropriate tool to address the problem. It is recognised that there is a need to rationalise the planning agreement system and this is further advanced in England and Wales.
- 7.2 Nevertheless, the existing system can be utilised by this council to seek contributions to infrastructure needs. However, it is appropriate to recognise both existing advice on the use of such agreements and the emerging consensus on how they should be framed in the future. Therefore the review of the Dundee Local Plan should set the context for the use of planning agreements including where they would be used, what level of financial contribution might be expected and what purposes the receipts would be put to. All capital receipts from developers for infrastructure improvements will be incorporated into the financial resources of the Council and a provision will be made in the capital programme in the financial year in which work is to be undertaken.

## **8 CONSULTATIONS**

- 8.1 The Chief Executive, Director of Finance, Director of Support Services and the Director of Corporate Planning have been consulted and are in agreement with the contents of this report.

**9 BACKGROUND PAPERS**

- 9.1 Nolan Report  
Standards in Public Life, HMSO – July 1997  
Scottish Executive Central Research Unit – Development Department Research Programme Research Findings No 118 – 2001  
Scottish Executive Development Department Circular 12 - Planning Agreements 1997  
Department of Transport Local Government and the Regions Planning Green Paper 2001

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