



Open Report on behalf of Andrew Crookham, Executive Director - Resources

Report to:	Executive
Date:	05 January 2021
Subject:	Final Report from the Developer Contributions Scrutiny Review
Decision Reference:	I021360
Key Decision?	No

Summary:

On 17 December 2020, the Overview and Scrutiny Management Board (OSMB) approved the attached scrutiny report on Developer Contributions for submission to the Executive. The report, prepared by Scrutiny Panel A on behalf of OSMB, makes a total of six recommendations. The Executive is requested to receive the report and make arrangements for responding to the report by 05 March 2021. This is to comply with the legal requirement contained in the Local Government Act 2000 section 9FE requiring the Executive to respond within two months.

Recommendation(s):

That the Executive:-

- 1) considers the Developer Contributions Scrutiny Review final report.
- 2) makes arrangements to respond to the report within two months. The Executive is requested to ask the relevant Executive Councillor(s):
 - (a) to indicate in the response which recommendations have been accepted; and
 - (b) where recommendations are accepted, to bring forward an action plan for their implementation.

Alternatives Considered:

The report on Developer Contributions is submitted to the Executive under section 10 of the Overview and Scrutiny Procedure Rules in the Constitution. The Executive is legally required to respond to the report within two months. The Executive has the option to accept or not accept each of the recommendations included in the report.

Reasons for Recommendation:

There is a constitutional requirement for the Executive to consider scrutiny review reports, and a legal requirement on the Executive to respond within two months.

1. Background

In September 2020, the Executive Councillor for Economy and Place, Councillor C J Davie, with the backing of Group Leaders, asked Scrutiny Panel A to carry out an urgent short review of Developer Contributions to see how the County Council can maximise the benefits for local communities from such contributions.

The following key lines of enquiry for the scrutiny review were agreed by the Panel:

1. To examine how Developer Contributions could be utilised to maximise the benefits to the local community and how a list of potential local schemes to fund through Developer Contributions could be developed, while taking into consideration the National Planning Policy Framework, local circumstances and the views of the local member.
2. To examine the impact of the proposals in the Government's consultation paper 'Planning for the future' and what the proposals would mean for Lincolnshire.
3. To examine how to achieve better quality design and more sustainable communities in new developments through the use of Developer Contributions, recognising that the viability of new developments can be marginal to the development industry.

Scrutiny Panel A consisted of Councillors L Wootten (Chairman), M T Fido (Vice Chairman), Mrs A M Austin, R Renshaw, S P Roe and M A Whittington. The Panel met three times in October and November 2020. Councillors C J Davie, Executive Councillor for Economy and Place, and E J Poll, Executive Councillor for Commercial and Environmental Management, attended the meetings as advisors on behalf of the Executive.

The attached report on Developer Contributions was approved by the Overview and Scrutiny Management Board at its meeting on 17 December 2020. There are six recommendations contained in the report for the Executive's consideration.

The Executive is invited to consider the report and assign responsibility to the relevant Executive Councillor(s) for responding to the report. As part of its response, the Executive is requested to indicate to the Overview and Scrutiny Management Board which recommendations in the report are accepted. Where recommendations are accepted, there is also a request for an action plan, showing what steps are being taken to implement the recommendations, with projected timescales, where possible. This will enable the Overview and Scrutiny Management Board to monitor the implementation of any actions arising from the report.

2. Legal Issues:

Equality Act 2010

Under section 149 of the Equality Act 2010, the Council must, in the exercise of its functions, have due regard to the need to:

- Eliminate discrimination, harassment, victimisation and any other conduct that is prohibited by or under the Act.
- Advance equality of opportunity between persons who share a relevant protected characteristic and persons who do not share it.
- Foster good relations between persons who share a relevant protected characteristic and persons who do not share it.

The relevant protected characteristics are age; disability; gender reassignment; pregnancy and maternity; race; religion or belief; sex; and sexual orientation.

Having due regard to the need to advance equality of opportunity involves having due regard, in particular, to the need to:

- Remove or minimise disadvantages suffered by persons who share a relevant protected characteristic that are connected to that characteristic.
- Take steps to meet the needs of persons who share a relevant protected characteristic that are different from the needs of persons who do not share it.
- Encourage persons who share a relevant protected characteristic to participate in public life or in any other activity in which participation by such persons is disproportionately low.

The steps involved in meeting the needs of disabled persons that are different from the needs of persons who are not disabled include, in particular, steps to take account of disabled persons' disabilities.

Having due regard to the need to foster good relations between persons who share a relevant protected characteristic and persons who do not share it involves having due regard, in particular, to the need to tackle prejudice, and promote understanding.

Compliance with the duties in section 149 may involve treating some persons more favourably than others.

The duty cannot be delegated and must be discharged by the decision-maker. To discharge the statutory duty the decision-maker must analyse all the relevant material with the specific statutory obligations in mind. If a risk of adverse impact is identified consideration must be given to measures to avoid that impact as part of the decision making process.

<p>There are not considered to be any direct implications for the Equality Act 2010 of the matters referred to in the report.</p>

Joint Strategic Needs Analysis (JSNA) and the Joint Health and Wellbeing Strategy (JHWS)

The Council must have regard to the Joint Strategic Needs Assessment (JSNA) and the Joint Health and Wellbeing Strategy (JHWS) in coming to a decision.

There are not considered to be any direct implications for the JSNA and the JHWS of the matters referred to in the report.

Crime and Disorder

Under section 17 of the Crime and Disorder Act 1998, the Council must exercise its various functions with due regard to the likely effect of the exercise of those functions on, and the need to do all that it reasonably can to prevent crime and disorder in its area (including anti-social and other behaviour adversely affecting the local environment), the misuse of drugs, alcohol and other substances in its area and re-offending in its area.

There are not considered to be any direct implications for crime and disorder of the matters referred to in the report.

3. Conclusion

In accordance with section 9FE of the Local Government Act 2000 this Report constitutes notice from the Overview and Scrutiny Management Board requiring the Executive to consider the Developer Contributions Scrutiny Review report and to provide and publish a response to the Board indicating what, if any, action the Executive proposes to make.

4. Legal Comments:

The Report introduces the results of a scrutiny review on Developer Contributions. The Report is submitted under section 10 of the Overview and Scrutiny Procedure Rules in the Constitution. The Report contains a notice from the Overview and Scrutiny Management Board under section 9FE of the Local Government Act 2000 and the Executive is required by section 9FE(5) of that Act to comply with the requirements specified in the notice.

5. Resource Comments:

There are no significant financial implications arising from the recommendations in this report, i.e. for the Executive to review the report and make arrangements to respond to it. Financial implications may arise subject to the Executive Councillor subsequently accepting recommendations included in the report and the action plan that is developed. Any such implications will be dealt with, as required, through the normal budget setting process.

6. Consultation

a) Has Local Member Been Consulted?

Not Applicable

b) Has Executive Councillor Been Consulted?

Yes

c) Scrutiny Comments

At a virtual meeting on 17 December 2020, the Overview and Scrutiny Management Board unanimously approved the draft final report as the final report on Developer Contributions for submitting to the Executive, subject to Recommendation 1 being amended as follows with the addition of the word 'negative' highlighted in bold text:-

That Lincolnshire County Council continue to oppose those aspects of the 'Planning for the future' White Paper which would limit the Council's ability to ensure that new developments had as little **negative** impact as possible on existing residents, communities, and businesses.

(This amendment has been included in the final report attached at Appendix 1.)

Members of the Board made the following points:

- The draft final report was an excellent piece of work on a complex subject involving different pieces of legislation. It was suggested that the report should be circulated to Lincolnshire's MPs for information.
- The report should be circulated to all district and parish councils for educational purposes.
- Recommendation 1 should be amended to say 'as little *negative* impact' to make it clearer the type of impact the Council sought to minimise on residents, communities and businesses.
- Lincolnshire County Council, along with the District Councils, should continue to robustly respond to the Government's communications on the 'Planning for the Future' White Paper, in particular to oppose those aspects which would impact negatively on Lincolnshire and outlining the reasons as to why. One major problem not addressed by the White Paper was 'land banking', where developers had received approval but had not commenced the development, or not had any immediate intention of doing so.
- One major concern was the erosion of local democracy and the limits on input into planning applications.
- The Council needed to establish clear systems to monitor developer contributions to ensure the money was received and the Council was not put at financial risk. There had been incidences where Section 106 agreements had been agreed as part of the approval, but the money was

not received or had been delayed due to cash flow issues with the developer.

- There was a need for real collaboration between all the councils in Lincolnshire to ensure that the same message was being given to developers and the process was fit for purpose.
- Planning applications were being approved by the local planning authorities; however some developments were not being built following the approval. Developers were getting round the planning regulations time limit for development by laying the foundations but then not completing any further development. This resulted in a significant blight on some local communities.
- The Council needed to have good working relationships with all developers and that messages inviting collaboration needed to be communicated to all developers, both large and small.
- The Council needed to be clear with residents and local communities about how it had spent money received from developer contributions and what benefits had been achieved.
- The actions to implement the recommendations, if agreed by the Executive, should be reviewed and updated when and where necessary to ensure they were still relevant and fit for purpose in the light of recent Government changes to the White Paper proposals and any additional changes to its proposals in the future.

d) Risks and Impact Analysis

No Applicable

7. Appendices

These are listed below and attached at the back of the report	
Appendix 1	Developer Contributions Final Report

8. Background Papers

The background papers within Section 100D of the Local Government Act 1972 used in the preparation of this report are the Background items described in the Scrutiny Review Report.

This report was written by Tracy Johnson, Senior Scrutiny Officer, who can be contacted on 07552 253814 or Tracy.Johnson@lincolnshire.gov.uk .