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EXECUTIVE DECISION RECORD

A1 Service Area	Regeneration & Planning Policy
A2 Title	Contribution of S106 Funding for Affordable Housing to the development at the Former Burton Mail Offices, Burton.
A3 Decision Taken By	Cabinet/ Leader/ Deputy Leader/ Chief Officer <i>(please delete as appropriate)</i>
A4 Chief Officer	Please print name: Andy O'Brien Please sign name: Approval by email 260620
A5 Leader / Deputy Leader	Please print name: Councillor George Allen Please sign name: Approved by email 260620
A6 Date of Decision	

Confidentiality

A7 Is this Decision confidential by containing exempt information as described in Schedule 12A of the Local Government Act 1972?	No
A7.1 If yes, please state relevant paragraph from Schedule 12A LGA 1972.	

Scrutiny

A8 Which Scrutiny Committee should this decision be submitted to?	<i>(Please tick as appropriate)</i> ✓
Scrutiny (Audit & Value for Money Council Services) Committee	<input type="checkbox"/>



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Scrutiny (Community Regeneration, Environment and Health and Well Being) Committee
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B1 What is the Decision?	That the Council contributes S106 commuted sums for affordable housing to the development at Former Burton Mail Offices, High Street, Burton in order to support the delivery of affordable housing
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B2 What are the reasons for the Decision?

In October 2017, the Brownfield and Infill Regeneration Strategy was approved by Cabinet, which set out the principle of utilising S106 funding to facilitate the delivery of affordable housing by effectively plugging the gap in funding.

In October 2019, Cabinet approved a pilot project taking this approach and this EDR sets out a proposal for a second, smaller project.

The Former Burton Mail Offices site on High Street, Burton, is an old office accommodation that has been recently acquired by a local developer. The proposal from the developer is to convert the building into a mixed use scheme comprising ground floor commercial use and upper floor residential accommodation, which would be 12 units of assisted living affordable housing. A summary of this proposal can be found at Appendix 1.

The developer has commissioned an independent rental analysis that shows the estimated development costs and potential rental income from social housing and open market housing. This report concludes that there is a funding viability gap between the two of £242,522, which is effectively the 'cost' of delivering affordable housing instead of market housing. This report is available at Appendix 2.

As such, the proposal is to contribute a total of £240,000 to this scheme, equalling £20,000 per unit, with the developer taking on the remaining viability gap obligation.

This funding would be subject to the developer delivering the following:

- An appropriate planning permission for the scheme as proposed;
- Confirmation that the service provider is a registered social landlord and that they will be in place via a legal agreement for a minimum of 10 years;
- A restriction on the title registered with the Land Registry that the property cannot be used for any other purpose than as affordable housing, as defined by the National Planning Policy Framework, unless otherwise agreed by the Council.

	<ul style="list-style-type: none"> • A restriction that any future provision of affordable housing, other than home ownership or shared ownership, is delivered by a registered social landlord, unless otherwise agreed by the Council. • A declaration that that funding will not cause the developer to breach state aid regulations, as outlined in B10.1, and confirmation of any previous <i>de minimis aid</i> within the last three fiscal years. <p>The contributed funding would be utilised from the S106 agreement associated with planning permission P/2013/00406.</p>
<p>B3 What are the contributions to Corporate Priorities?</p>	<p>This contributes towards the Corporate Priority of Community Regeneration and is aligned with Corporate Plan target CR23, through which an update will be provided to Members later in the year.</p>
<p>B4 What are the Human Rights considerations?</p>	<p>There are no Human Rights issues arising from this decision.</p>

Financial Implications

<p>B5 What are the financial implications?</p>	<p>The main financial issues arising from this decision are as follows:</p> <p>Subject to the above, the Council would provide funding to the developer to the amount of £20,000 per unit of affordable housing, to a maximum of £240,000 or 12 units.</p> <p>Funding would be paid to the developer on a monthly basis, subject to evidence of expenditure and progress, which would be on a pro-rata basis across the length of the build programme (expected to be 6-9 months).</p> <p>By requiring the service provider to be a registered social landlord (RSL), placing restrictions on future service provision and ensuing it's delivered through an RSL, this mitigates the risk of additional costs to the revenue budget from loss of housing benefit subsidy associated with supported housing.</p>
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Revenue	2020/21	2021/22	2022/23

Capital	2020/21	2021/22	2022/23
S106 grant (to be met from ring-fenced commuted sums reserve)	£240,000		

The finance section has been approved by the following member of the Financial Management Unit:	Please print name: Anya Murray Please sign name: Approved by email 100620
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Policy Framework

B6 Is the Decision wholly in accordance with the Council's policy framework?	Yes
B6.1 If No, does it fall within the urgency provisions (Part 3 of the Constitution)?	NA
B6.2 Has it got the appropriate approvals under those provisions?	NA
B7 Is the Decision wholly in accordance with the Council's budget?	Yes
B7.1 If No, does it fall within the urgency provisions (Part 3 of the Constitution)?	NA
B7.2 Has it got the appropriate approvals under those provisions?	NA

Equalities Implications

B8 What are the Equalities implications:
B8.1 Positive (Opportunities/Benefits):
B8.2 Negative (Threats):
B8.3 The subject of this decision is not a policy, strategy, function or service that is new or being revised. An equality impact assessment is not required.
B8.4 [The equality impact assessment identified the following actions to be carried out:]

Risk Assessment

B9 What are the Risk Assessment implications:
B9.1 Positive (Opportunities/Benefits): The opportunity of facilitating the delivery of affordable housing in Burton town centre whilst utilising S106 funding that has an expiry date.
B9.2 Negative (Threats): The risk of non-delivery by the developer, however funding is subject to conditions outlined in section B2 and on a schedule outlined in B5 to mitigate this.
B9.3 The risks do not need to be entered in the Risk Register. Any financial implications to mitigate against these risks are considered above.

Legal Considerations

B10 What are the Legal Considerations:

B10.1 The main legal issues arising from this decision are as follows:

Commutated sums are provided to the Council from developers through section 106 of the Town and Country Planning Act 1990, confirmed via a S106 agreement.

This proposal would utilise funding from the S106 agreement associated with permission P/2013/00406, which requires the Council to expend the funding on alleviating housing need within the Borough of East Staffordshire within five years of payment [30th June 2022].

Payment by the Council of S106 commuted lump sums direct to the developer is, on the face of it, unlawful State Aid unless notified and approved by the EU Commission or covered by an exemption. However, there is a strong argument that, in providing a fully affordable housing development on this site, the developer is carrying out a Service of General Economic Interest (“SGEI”). A direct contribution by the Council of S106 commuted sums to the developer of up to a maximum of €500k could qualify as SGEI *de minimis* aid, provided that the developer has not already been the beneficiary of such aid over the previous three fiscal years (or, overall, the EU 500k ceiling would not be exceeded over that period).

This section has been approved by the following member of the Legal Team:

Please print name: Angela Wakefield

Please sign name: [Approved by email](#)
150620

Sustainability Implications

B11 What are the Sustainability implications:
B11.1 The proposal would result in an overall positive effect in terms of sustainability (including climate change and change adaptation measures). The positive/negative impacts are set out below (please refer to guidance notes).
B11.2 Positive (Opportunities/Benefits): The redevelopment of a town centre brownfield site in order to provide town centre residential accommodation.
B11.3 Negative (Threats):

Health & Safety Implications

B12 What are the Health & Safety implications:
B12.1 A Risk Assessment has not been carried out and entered into Safety Media for all significant hazards and risks because there are no significant hazards or risks arising from this decision.
B12.2 [The significant hazards and risks have been identified in the Safety Media Risk Assessment numbered []. Any financial implications to mitigate against these hazards and risks are considered above.]
B12.3 [Control measures and an action plan have been identified for any significant hazards and risks identified in the risk assessment. The positive/negative impacts are set out below]
B12.3.1 Positive (Benefits)
B12.3.2 Negative (Threats)

Key Decision

B13 Is this a Key Decision?	Yes
<p>Note: A Key Executive Decision is one where:</p> <ol style="list-style-type: none"> 1. REVENUE – Any contract or proposal with an annual payment or saving of more than £100,000 2. CAPITAL – Any capital project with a value in excess of £150,000 3. A decision which significantly affects communities living or working in an area comprising two or more wards. 	
B13.1 If this is a Key Decision, is this an urgent decision such that a delay caused by use of the Call-in Procedure would <u>seriously</u> prejudice the public interest?	No
B13.2 If yes, has the Mayor or in his/her absence the Deputy Mayor or in his/her absence the Chair of the relevant Scrutiny Committee agreed that the decision will be exempt from Call-in?	NA

NOTE: If this decision is subject to the Call-in Procedure it will come into force, and may then be implemented, on the expiry of 3 working days after publication – unless 10 Members of the Council call in the decision.

Please send the original signed document to andrea.davies@eaststaffsbc.gov.uk