

Date of meeting: 12 May 2025

Title	How to use affordable housing commuted sum
Purpose of the report	To make a Key Decision
Report Author	Marta Imig, Strategic Housing Lead
Ward(s) Affected	All Wards
Exempt	No
Exemption Reason	n/a
Corporate Priority	Addressing Housing Need
Recommendations	<p>Committee is asked to:</p> <ol style="list-style-type: none"> 1. To consider options within this report for commuted sum usage to provide affordable housing and select a preferred option 2. Authorise the Strategic Housing Lead to explore further the preferred option and to prepare a report for this Committee to consider and to recommend a decision to Council.
Reason for Recommendation	To deliver affordable housing in the Borough using commuted sum secured.

1. Summary of the report

What is the situation	Why we want to do something
<ul style="list-style-type: none"> • The Council secured a commuted sum of £3.85 million towards off site affordable housing provisions within the Borough. • A decision is require how to best spend the funding available. 	<ul style="list-style-type: none"> • To deliver affordable housing for residents of Spelthorne registered on the Council's Housing Register.
This is what we want to do about it	These are the next steps
<ul style="list-style-type: none"> • Use the commuted sum to deliver affordable housing in the borough. 	<ul style="list-style-type: none"> • Members to provide directions to officers on the usage of the commuted sum • Officers to proceed based on Members' directions and to present details of the specific delivery model in a separate report for approval.

- 1.1 This report seeks Members' direction on the spend of secured commuted sum for off-site affordable housing delivery.

2. Key issues

- 2.1 On 5 February 2025 the Council's Planning Committee approved the application of Fairview Homes Ltd (planning ref 24/01268/RVC) in respect of land at Elmsleigh Road, Staines, to vary the s.106 agreement attached to the original planning permission. This enabled a payment of £3.85 million towards off site affordable housing in lieu of the delivery of affordable housing on site.
- 2.2 The Deed of Variation was signed (on 6 February 2025) – enclosed in Appendix C. This removed all previous affordable housing obligations from the original s.106 agreement and required a payment of the agreed commuted sum after a period of 6 weeks and 5 days if no Judicial Review (JR) challenge was made (which provided to be the case) and prior to any dwelling being occupied. The payment has now been received.
- 2.3 The commuted sum can only be used for off-site developments to provide additional affordable housing units over and above any required as part of the planning application. The definition of s106 affordable housing is set out in the National Planning Policy Framework [National Planning Policy Framework - Annex 2: Glossary - Guidance - GOV.UK](#).
- Affordable housing is defined as “Housing for sale or rent, for those whose needs are not met by the market (including housing that provides a subsidised route to home ownership and/or is for essential local workers); and which complies with one or more of the following definitions – (1) social rent e.g. locally set rent which might be anything over 60% of market rent (2) other affordable housing for rent – e.g. 80% of market rent (3) Discounted market sales housing e.g. is sold at a discount of at least 20% below local market value (4) Other affordable routes to home ownership e.g shared ownership, relevant equity loans, other low cost homes for sale.
- 2.4 The commuted sum cannot be used to cover financial losses of a development (e.g. it cannot make an unviable scheme viable). The money may also be used to purchase street properties for affordable housing purposes. All affordable dwellings require nominations agreement to ensure those at most need on the Council's Housing Register are prioritised.
- 2.5 As per the s.106 agreement the commuted sum must be spent or committed as expenditure within 5 years of receipt or it will need to be paid back.
- 2.6 Commuted sum secured on other sites are as follows:

Level of s106 commuted sums

Site	Sum	Received	To come	Allocated?
Jewsons site, Staines	£80,471	Yes	N/A	Yes. Ashford Cemetery Lodge
Running Horse, Sunbury	£2,500,000	No	50% on 1 st occupation. Rest on occupation of 51% of units 2026 onwards	No
Fairview site, Staines ?	£3,850,000	No	2025 (almost immediately after any decision)	No

3. Options analysis and proposal

- 3.1 Officers identified the following options to utilise the commuted sum for affordable housing delivery:

Option 1 - Acquisition of a freehold of a block of 12 flats in Staines, asking price £3,320,000 – details attached in **Appendix A**. If agreed the price will be negotiated. This is a rare opportunity to acquire an entire block of flats, which is ready for occupation immediately upon purchase and would be used as settled accommodation and reduce the numbers on the Council's Housing Register. This block of flats comprises 8 one bedroom units and 4x 2-bedroom units; the graph below illustrates the current demand

Housing Register Applications by Band and Calculated Bedroom Need:

Band	Requires a 1-bed	Requires a 2-bed	Requires a 3-bed	Requires a 4 bed or more	Grand Total
A	35	17	6	-	58
B	112	249	100	32	493
C1	321	190	192	32	735
C2	110	118	75	18	321
D	532	321	109	12	974
Grand Total	1,110	895	482	94	2,581

The freehold may be subsequently transferred to Knowle Green Estates Ltd. (KGE). Any such transfer shall be subject to full Council approval and KGE board approval.

The remaining balance (approximately £0.5m) after the purchase of the above property, could be used to source additional properties for acquisition (and spent within five years). See option 3.

In the event the Committee is minded to proceed with this option, counsel opinion may need to be obtained to assess potential risk of a challenge from the developer on the grounds of the Council passing the benefit of the commuted sums to its wholly owned company.

Option 2 - Application to Homes England for funding for property acquisition and the use of commuted sum to supplement the funding received – note the new programme is due to be announced in the Spring Budget Review, no current details are known at this stage.

Option 3 – To work in partnership with a Register Provider (RP) or as the Local Housing Authority to acquire and to manage affordable housing in Spelthorne with nomination rights to the Council.

This could include either market property acquisition or empty homes acquisition. Although, the Council's experience shows that RPs take a long time to deliver such schemes and the Council has no control over the project completion within required timescale.

The purchase of empty homes in accordance with our Housing Strategy is within the Council's control and could include the compulsory purchase of empty properties as outlined in the Housing Strategy 2020 – 2025.

The Council could also consider acquiring affordable housing available at any current developments in Spelthorne. Whilst it is likely that such affordable housing would already be allocated to a specific Registered Provider under planning arrangements, such Registered Provider may be open to shifting their allocations depending on local housing needs.

Option 4 – the acquisition of additional nomination rights for the Council in relation to the development at Ashford Victory Place.

Nomination rights i.e. the right to nominate applicants on the Council's Housing list to properties held by Registered Providers or other bodies might not meet the requirement to spend the monies on affordable housing as a nomination right of itself might not make the property affordable in accordance with the National Planning Policy Framework.

In the event the Committee is minded to proceed with this option, further research is required and / or counsel opinion may need to be obtained to assess potential risks (if any) associated with this option.

Option 5 – any other options as directed by Members.

4. Financial management comments

- 4.1 A full financial viability analysis will be undertaken before a decision would be made to progress with acquisition with reports to go to Corporate Policy and Resources (CPRC) for approval.
- 4.2 The viability assessment will consider the ongoing cost of the property management.
- 4.3 If property acquisition is agreed with the funding, this will require the Committee to recommend a Supplementary Estimate to the Capital Programme to authorise the gross capital expenditure. With the commuted sum, the Council could take the approach that the net cost to the Council was zero and therefore the assets could be transferred at nil price to KGE.
- 4.4 This approach will provide much need additional affordable housing accommodation, easing pressures on the housing revenue budget and reducing the number of households on the Council Housing Register, without incurring any additional borrowing.

5. Risk management comments

- 5.1 The risk to the Council is KGE Board not approving to purchase the properties, if it cannot be demonstrated that the properties would be financially sustainable on a loan term basis should the Company had to cover associated financing costs. To minimise the risk, Council Officers will work closely with KGE Board to ensure suitability when proposing properties for purchase.
- 5.2 Pending approval of transfer to KGE, there are some risks to KGE associated with property management. Such as, bad debt, delays, repairs and risk of void costs. Due to current demand, it is unlikely that the Council will have a shortage of people to nominate to the properties. However, it should be considered as a long-term risk as future demand can change.
- 5.3 There is a risk that a particular property considered for purchase may be found unsuitable for acquisition through findings either in the survey or through the due diligence process.
- 5.4 Risk considerations vary for each of the options set out in section 3. The risk profile of the selected option will be considered in full in the subsequent report.
- 5.5 The selected option must categorically evidence the provision of affordable housing in line with the reason the commuted sums were provided to the Council, failing which the monies could be reclaimed.

6. Procurement comments

- 6.1 None arising directly from this report. Procurement requirements in relation to the selected option will be fully considered in the subsequent report.

7. Legal comments

- 7.1 Under section 106 of the Town and Country Planning Act 1990 (as amended), the Council as a Planning Authority may secure provision of affordable housing

as a planning obligation in the form of commuted sums in lieu of on-site provision. The commuted sums can only be used for the purpose for which they were provided, in this instance the provision of affordable housing. Typically, s106 monies have conditions which must be met, e.g. when and where the funds must be used.

8. Other considerations

- 8.1 It is proposed that the additional accommodation units would be owned / managed by Knowle Green Estates (KGE), which would also assist with KGE's longer term viability.

9. Equality and Diversity

- 9.1 Equality and Diversity Assessment is enclosed as **Appendix B**.

10. Sustainability/Climate Change Implications

- 10.1 The proposed policy may have an impact on the Council's sustainability / climate change position. Any new property acquisitions would need to be reviewed for their carbon emission totals and potentially upgraded to manage their energy and water efficiency, and potentially options of renewable energy considered depending on location and orientation.

11. Timetable for implementation

- 11.1 TBC
- 11.2 If the Committee agrees to progress, a report would need to be made to Council to recommend a Supplementary Capital Estimate.

12. Contact

- 12.1 marta.imig@spelthorne.gov.uk

Background papers: None

Appendices:

Appendix A: London Road offer prospectus

Appendix B: Equality and Diversity Impact Assessment