Supporting housing delivery through developer contributions

Briefing Note

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Reforming developer contributions to affordable housing and infrastructure

The Government issued on the 5th March a consultation on reforming developer contributions to affordable housing and infrastructure in respect of:

1. Community Infrastructure Levy
2. Section 106 Planning Obligations
3. Strategic Infrastructure Tariff
4. Technical Clarifications to Regulations

A number of the changes were previewed as part of the Autumn Budget (2017) and are now tied into the revisions National Planning Policy Framework in which the Government recognises the need for changes to the delivery of housing in order bring forward 300,000 homes a year in England.

Developer contributions are an important element in meeting the costs of infrastructure and an estimated £6.0bn was committed through Section 106 and CIL in 2016/17, a real term increase of 50% since 2011/12. However, not all planning permissions are built out, and planning obligations may be renegotiated so the actual amounts spent may be less.

Although the total amounts committed increased, the value of Section 106 and CIL per dwelling built has remained broadly the same in spite of house prices having increased by 30%. The Government consider that the current system of developer contributions can quickly become dated and may only have captured a small proportion of the increase in value that has occurred since 2011.

The Government has identified the importance for house builders to know what contributions they are expected to make towards affordable housing and essential infrastructure, as is the need for local authorities to hold developers to account. The Governments view is that it is right to consider whether a higher proportion of affordable housing can be delivered where there is a higher uplift in land value created by development.

However, the current system is considered too complex and uncertain, effectively acting as a barrier to delivery. An option being considered by Government is for developer contributions to be set nationally and made non-negotiable. Such an approach would need wider consultation on appropriate transition mechanisms. This would allow developers to take account of reforms and reflect the contributions as they secure sites for development. The proposals in the consultation are described as an important first step in that process.

A number of criticisms of the existing system are made which include:

- There is only 44% of potential charging Authorities with CIL in place;
- A number of Authorities without CIL have not adopted the levy on the grounds of viability;
- It is a complex process for Local Authorities to establish and review CIL rates;
- Development is delayed by negotiations for Section 106 agreements including the use of viability assessment in determining planning applications;
- There is a lack of faith from communities in respect of renegotiated financial contributions based on viability assessments after agreements have been reached;
- CIL is not responsive to changes in market conditions;
- It is unclear where CIL and Section 106 monies have been spent; and
- Developer contributions do not enable infrastructure that supports cross boundary planning.

The Governments objective is to make the contributions system more transparent and accountable. By focusing viability assessment on plan making rather than decision making, the government believes will reduce delays caused by renegotiation of developer contributions.

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Improved viability assessment in plan making will seek to set values that will accord with relevant policies in the development plan (e.g. provision of affordable housing) meaning there is no need for a viability assessment to accompany a planning application. To ensure transparency and accountability, all viability assessments are to be conducted on an open book basis and would be publicly available.

Suggestions are put forward to deliver improvements, reduce complexity and increase certainty in the Section 106 and CIL regimes such as:

- Relaxing the Commencement Notice requirement for CIL exempted development by providing a 2-month grace period in which the notice can be served.

- Clarifying how indexation is applied where a planning permission is amended; meaning that indexation for residential development would be linked to regional or local authority house prices. For non-residential development the Government could index commercial development to a factor of house prices and Consumer Price Index (CPI), or to CPI alone. This would be a departure from the BCIS link at present.

- Allowing Local Authorities to base CIL charges on the existing use of land to capture an amount which better represents the infrastructure needs and the value generated through planning permissions. This is intended to increase market responsiveness so that local authorities can better target increases in value, while reducing the risks for developers in an economic downturn. Local Planning Authorities will have the ability to set CIL at a low or zero rate to support regeneration.

- Simplifying the charging of CIL on complex sites, by encouraging the use of a single rate set for the entire site; charging on the basis of the majority use where 80% of the site is in a single existing use, or where the site is particularly small; and other complex sites could be charged at a generic rate.

- Improving transparency for communities and developers over where contributions are spent and expecting all viability assessments to be publicly available subject to some very limited circumstances.

- Replace Regulation 123 with the requirement to publish Infrastructure Funding Statements that explain how CIL and Section 106 monies will be spent over the next five years.

- Allowing local authorities to introduce a Strategic Infrastructure Tariff. This would follow the approach taken by the Mayoral CIL in London and would allow combined authorities and joint committees, where they have strategic planning powers, to introduce a Strategic Infrastructure Tariff. This would encourage cross boundary planning. Local authorities would be able to keep up to 4% of the SIT receipts for administration costs.

- Remove the pooling restriction on S106 contributions in areas that; have adopted CIL; where Authorities fall under a threshold based on the tenth percentile of average new build house prices, meaning CIL cannot feasibly charged; or where development is planned on several strategic sites. In other circumstances, the pooling restriction would be retained.

There are 34 questions set out in the consultation reports which seeks views on these suggestions by the Government. DLP Planning Ltd has extensive experience in advising on Section 106 planning obligations and CIL charges, as such, we would be happy to prepare representations on your behalf to the consultation process which runs from 5 March to 10 May 2018.

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