

Public Document Pack

Tony Kershaw
Director of Law and Assurance

If calling please ask for:

Clare Jones on 033 022 22526
Email: clare.jones@westsussex.gov.uk

www.westsussex.gov.uk

County Hall
Chichester
West Sussex
PO19 1RQ
Switchboard
Tel no (01243) 777100



10 July 2023

Dear Member,

County Council - Monday, 17 July 2023

Please find enclosed the briefing notes for the motions to be debated at the meeting of the County Council to be held on Monday, 17 July 2023.

Agenda No	Item
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10(a)	Notice of Motion on Infrastructure Levy (Pages 3 - 6)
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Briefing note on factual background information attached.

10(b)	Notice of Motion on Highways Repairs (Pages 7 - 10)
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Briefing note on factual background information attached.

Yours sincerely

Tony Kershaw
Director of Law and Assurance

To all members of the County Council

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County Council – 17 July 2023

Item 10(a) - Notice of Motion on Infrastructure Levy from Cllr Dabell

Briefing Note

Introduction

On 17 March 2023, the Government published a [technical consultation](#) on the new Infrastructure Levy (the 'Levy'), which is being introduced through the Levelling-Up and Regeneration Bill (LURB).

The LURB seeks to replace the current system of developer contributions (i.e. Community Infrastructure Levy (CIL) and S106 agreements) with a mandatory, more streamlined, and locally determined levy. There is the suggestion that S106 agreements will continue to be used to secure the delivery of some infrastructure but this would be at a reduced level.

The consultation, which closed on 9 June 2023, set out the proposed technical details of how the Levy could be implemented and how it could work in practice. Responses to the consultation will inform the preparation and content of regulations, which will themselves be consulted on should Parliament grant the necessary powers set out in the LURB.

Background

Since the implementation of CIL nationally in 2014, there have been numerous changes to national regulations and guidance seeking to improve its introduction and operation.

CIL has now been adopted by all the local planning authorities in West Sussex, excluding Adur District Council and Mid Sussex District Council; in those two areas, S106 agreements are the only mechanism to secure developer contributions. As a consultee in the CIL, the County Council has no control over setting and collecting the levy, deciding spending priorities, and the allocation of funds.

In recent years, the Government has consulted on changes to the developer contributions system through the 'Reforming Developer Contributions Technical Consultation on Draft Regulations' (December 2018) and the 'Planning White Paper' (August 2020). The Planning White Paper sought answers to specific questions regarding the introduction of a national levy.

Based on the County Council's experience of the operation of CIL across most of the County, comments were submitted to those consultations, setting out areas of concern and caution regarding a national Levy.

Consultation

The recent consultation says that the Levy would be a more efficient system, "largely sweeping away the sometimes-protracted negotiation of Section 106 planning obligations". It also says the Levy would be mandatory with all local planning authorities required to implement it.

The proposals would see the amount that developers pay calculated only once a project is complete, rather than, as at present, when the site is given planning permission. The reason for this would be to ensure contributions capture the benefit from increases in land value between the granting of planning permission and completion of construction.

It proposes that the Levy would be more transparent, with charging schedules making the expected value of a contributions clear up-front. It would also make it clear to (a) existing and new residents what new infrastructure would accompany development and (b) to developers what infrastructure would be required to make the development acceptable.

'Charging Authorities' (i.e., lower-tier and unitary authorities) would be able to set rates themselves, with a portion of the money to be passed directly to communities as a 'neighbourhood share' to fund their infrastructure priorities (as happens with CIL). County councils would not be Charging Authorities and would not have a statutory role on the process.

Charging Authorities would be required to engage with communities and consult with upper-tier authorities as part of the process.

Charging Authorities would be required to prepare an Infrastructure Delivery Strategy, which would set out their spending plans.

The Government has committed to the Levy securing at least as much affordable housing as developer contributions currently do. Affordable housing currently sits outside CIL. Charging Authorities would have the 'right to require', meaning they would be able to dictate how much of the Levy would be used to deliver affordable housing on-site and how much would be given in cash for other infrastructure.

The new 'right to require' proposes that the developer would be obliged to deliver the apportionments set out by the planning authority, thereby eliminating negotiation and affording greater protection to policy compliant levels of affordable housing.

The consultation says that the Levy would prevent developers from negotiating down the amount they contribute to a community on projects they bring forward.

It was proposed that the Levy would be rolled-out through a 'test and learn' approach from 2025, meaning that it would be tested by a representative minority of authorities prior to a nationwide roll-out. This would mean that the Levy would not be rolled out nationally until 2029-32.

WSSC Consultation Response

On 9 June 2023, the County Council responded to the consultation setting out general comments and responses to the questions asked by the Government.

The following is a summary of the general points made by the County Council in its consultation response:

- disappointment and concern that upper-tier authorities, which are providers of infrastructure that is essential to economic health and social well-being, would not have a statutory role in the Infrastructure Levy process.

- the Government should ensure that county councils have a statutory role in the process, especially in the identification and prioritisation of infrastructure, and the allocation of collected funds.
- concern that the proposed Levy will not resolve the current issues with the CIL system experienced by service providers and could result in worse outcomes for county councils and other service providers in securing contributions towards the essential infrastructure that supports the delivery of development and economic prosperity.
- concern that considerable additional resources and expertise would be required to implement the proposed Levy.
- overall, the new Levy should not be introduced as currently proposed and that the Government should focus on reforming the existing developer contributions system. This should include a statutory role for county councils in the identification and prioritisation of infrastructure, and a dedicated share of funds for upper-tier authorities.
- the County Council would be happy to work with the Government and others to reform the current developer contributions system and, if the proposal is retained, the introduction of the Infrastructure Levy so its shortcomings can be addressed.

Related Matters

Following the close of the consultation, 30 organisations (including the County Councils Network, charities, housebuilders, professional bodies, and housing associations) wrote to the Secretary of State for Housing, Communities and Levelling Up Secretary, calling on him to not implement the proposed Levy. This was because, in summary, it could result in less infrastructure being delivered and fewer affordable homes being built, and because there could be an adverse impact on housing delivery.

Lee Harris

Director of Place Services

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County Council – 17 July 2023

Item 10(b) - Notice of Motion on Highways Repairs from Cllr Lord

Briefing Note

Motion paragraph (3)(a)

West Sussex experienced one of its hottest summers in 2022 and this was followed by higher-than-average rainfall from September to January, with exceptionally high rainfall in November leading to widespread flooding on the network. Extremely cold periods in December and January resulted in an unseasonably high number of gritting outings. These extreme weather fluctuations contributed to the unprecedented volume of defects.

The incidence of safety defects is increasing year on year. The average over the past three years has increased to 38,200 compared to 32,268 over the previous seven years. Numbers are exceptionally high this year and, if they continue at the same level, a total of between 45,000 and 50,000 is expected.

Neighbouring southeast authorities have also experienced significant increases in defect numbers. A number of authorities across the region, including West Sussex, have written to the Government to ask for more funding for highway maintenance to address the longer-term investment required to prevent potholes.

In terms of the response to these repairs during the winter months, it is extremely difficult to increase resources to meet demand when all local highway authorities are experiencing similar demand increases. The County Council did deploy extra safety gangs and extended their working days, working twilight and weekend shifts. In addition 'find and fix' gangs were deployed to focus efforts in specific areas. The emphasis has to be on making the network safe and occasionally this has an impact upon the long-term quality of repairs.

In recognition of the issues across the network, the County Council has allocated exceptional revenue funding of £4.5m in 2023/24. This supports additional resources on proactive activities which will better prepare the county's road network for the winter season. The best time to fix road defects properly is when the weather is warm and dry which is not when the majority of the problems occur. Initiatives being implemented include:

- **Right First-Time approach** where all repairs to be mandated as 'cut, sawn and sealed'
- **Jet Patchers** – additional Jet Patcher funded so there are now three employed across the county
- **Additional 'Small Scale' Patching gang** working during the summer months. Patching can add structural strength back into the area of carriageway
- **Find & Fix Gangs** – additional funding for gang resource in the winter
- **Drainage** – water-logged roads impact the condition of the network. Additional resources to undertake jetting, CCTV investigations, gully repairs and preventative maintenance

- **Additional Patching budget** – additional capital for small scale patching work

Motion paragraph (3)(b)

The contractor plans their work to meet contractual timescales. Efforts will be made to publish more granular data showing timescales on a district/ward basis. This will confirm the lack of geographical bias in the allocation and prioritisation of work.

Motion paragraph (3)(c)

To improve engagement with district, borough, town and parish councils on highway matters officers have engaged with the West Sussex Association of Local Councils, Arun councils and Mid Sussex councils to try and understand what would improve awareness and knowledge sharing. Due to the upsurge in activity following the winter resources have been limited in recent months but when back to normal 'business as usual' more resource will be applied to this activity.

Motion paragraph (3)(d)

The County Council has piloted alternative delivery models with town councils and continues to work with other councils in the county on highway maintenance matters.

Mid Sussex town councils have agreed to provide feedback on the quality of highway repairs over the summer months, with East Grinstead Town Council providing more granular, specific feedback on repairs. This is a positive way to audit our activities and focus efforts on quality and timeliness of repairs.

There is a complexity to the reactive highways service which would be extremely onerous for other councils. Amongst the barriers to this are:

- Liability – there would be a requirement for indemnity and insurance cover engagement with the Council's insurers in cases of conflicting liability. This includes accounting for responsibility to address damage claims, evidence collation and court attendance.
- Qualifications and Equipment – anyone working on the highway needs to hold specific certification and use approved equipment and materials.
- Permitting – all works on the highway require, as a matter of law, a permit from the County Council which will add an administrative burden upon both councils involved.
- Record Keeping – defects and repairs are recorded on a central system that is used to support our asset management and provide a basis for responding to claims.
- Emergency call out – the service provides a 365 days a year/24hr call-out service.
- Health and Safety – any third party would be working for or on behalf of the highway authority and as such would need to comply with statutory and contractual requirements for compliance and consequent liability.

The current contractual arrangement revolves around a lump sum payment for a set number of safety defect repairs. The volume of work provides economies of scale, so the cost to repair a defect provides good value for money given the large volume the contactor is dealing with. If the number of defects reduces within the main contract as other councils take on some of the work the cost per defect will increase. Also, the reactive service model provides county-wide out of hours emergency response and the operatives double-up as gritter drivers which would be at risk if taking out specific elements out of the work.

The contract is currently tendered on a pan-county basis. If the County Council paid other councils to undertake defect repairs it would effectively be paying twice as we cannot simply reduce the lump sum we pay to our contractors.

The officer time required to negotiate and manage formal agreements with numerous local councils across the county to undertake work on some form of agency basis would be significant. It would require the involvement of officers currently managing the major maintenance contracts and service plans. This would be likely to have an adverse impact on capacity and the best use of resources.

Lee Harris

Director of Place Services

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