

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