



COUNCILS AND
COMMUNITIES
IN PARTNERSHIP

For the attention of Neil McDonald
Communities and Local Government
Eland House
Bressenden Place
London
SW1E 5DU

17 April 2008

Dear Neil,

COMMUNITY INFRASTRUCTURE LEVY

The Regional Assembly is the statutory Regional Planning Body for South East England. The Assembly is responsible for the preparation of the 'upper tier' of the statutory Development Plan; the South East Plan.

The Assembly's Regional Planning Committee recently considered the content of the CLG document that sets out the background to the Community Infrastructure Levy. The views set out in this letter reflect the outcome of that debate. It also sets out the Assembly's willingness to engage in the development of the CIL regulations.

The Assembly has a well-established track record of providing leadership on implementation issues at the regional level. The Implementation Plan that supports the South East Plan was heralded by the Panel that conducted the Examination in Public as ground breaking. The Implementation Plan applies a 'business planning' approach to the identification of infrastructure requirements. This, in turn, provides the strategic context within which Local Planning Authorities will prepare their Local Development Framework (LDF).

The Implementation Plan identifies three 'pre-conditions' for effective implementation of the policies and proposals set out in the South East Plan;

- i) increased levels of public sector investment;
- ii) increasing the contribution from the private sector;
- iii) increasing the alignment of investment programmes.

We believe that the proposal to introduce a Community Infrastructure Levy represents a major opportunity to address the second of these pre-conditions.

The potential to secure contributions from large scale developments is already effectively targeted by the majority of local authorities. However, it is the smaller developments (typical of the kind of development seen in our region) where the potential exists to increase the private sector contribution towards the cost of providing community infrastructure. Notwithstanding the fact that this potential exists, it is essential that the critical importance of core public sector funding in enabling sustainable economic growth continues to be acknowledged.

We note that the definition of infrastructure will be set out in the regulations. Our Implementation Plan included a definition of infrastructure. The Panel endorsed this definition and recommended its inclusion in the final version of the South East Plan to be published by the Secretary of State. We therefore commend this definition for consideration in the drafting of the CIL regulations.

We believe that it is important to ensure that the definition set out in regulations does not preclude the use of CIL to fund the provision of services, as well as physical improvements. We support the proposal that CIL could be used to enhance the use of existing infrastructure on the basis that this could be a significant consideration in determining whether a development proposal is acceptable.

Building on our work on implementation at the regional level we are using our statutory role to assess the conformity of LDFs as an opportunity to encourage the more widespread adoption of a 'business planning' approach at the local level.

The Panel's view was that the formal status of the Implementation Plan for the South East Plan was less important than its role and content. They saw the Implementation Plan as an evolving document that is regularly updated. In comparison they saw the policies and proposals set out in the South East Plan as being sufficiently robust to stand the test of time.

We believe that this approach represents a pragmatic way forward. Keeping the Implementation Plan as a 'living' document, capable of revision and amendment without the need to go through an extended statutory process, will, we believe, strengthen our ability to target the resources available at a regional level to maximum benefit.

Applying this logic to the 'lower tier' of the Development Plan, the LDF implementation plan has the potential to form the basis for setting out the schedule for applying the CIL. We believe this to be the case because one of the tests of soundness for the LDF is an assessment of the content of the implementation plan.

Our work on implementation has highlighted that the level of detail one can attribute to infrastructure requirements varies over time. Short term requirements are usually well defined and their cost identifiable with a high degree of certainty. In the medium to longer term the requirements become less well defined, although it is possible to identify key issues that will need to be addressed at a future point in time.

This reality needs to be reflected in the preparation of the schedule setting out the basis for CIL. Bearing in mind that the CIL is not expected to account for all of the cost of the community infrastructure required to support growth, the critical issue is to identify an appropriate contribution from the private sector. While the scale of this contribution will be easier to define in the short term, it needs to be set in the context of the potential contribution over the longer-term. Bearing in mind that the LDF will be the subject of regular review we believe it should be possible to establish a robust schedule for CIL covering the short term (say a 5-year period) that is then reviewed as part of the LDF review.

It will be important that the regulations enable local planning authorities to set out the basis on which they make allowances for inflation within the published schedule. Experience in South East England demonstrates the impact of construction price inflation on the cost of infrastructure. Local authorities must be able to reflect this experience in setting their figures.

Delivery of sustainable economic growth requires investment in a wide range of infrastructure. The regulations should therefore not overly prescribe who is eligible to receive CIL. Circumstances will vary from authority to authority. The regulations should be drafted in a way that enables authorities to have the maximum flexibility in the use of the CIL, subject to the caveat that there is a robust basis set out in the LDF implementation plan.

It is essential that the regulations do not restrict the use of CIL to capital investment. A strength of the current S106 regime is that it enables local authorities to secure, through agreement, revenue streams for a prescribed period. This has enabled local authorities to secure contributions towards the provision of services such as enhanced public transport. This flexibility needs to be retained as part any future regime.

We support the proposal to allow local authorities the flexibility to use the more predictable flow of income to the benefit of their communities. We support the proposal to enable local authorities to reserve CIL receipts for expenditure that may be incurred in the future. We also support the proposal to permit local authorities to give loans to deliver infrastructure in a timely manner.

This latter flexibility is particularly critical in that it will facilitate the application of forward funding mechanisms, such as the Regional Infrastructure Fund (RIF) that is being developed jointly by the Assembly and SEEDA.

By way of illustration it is useful to consider an example associated with Ashford. Here the local authority, in partnership with regional and local stakeholders, has identified the infrastructure required to support its planned growth. It has identified the contribution that might be expected from the private sector through the planning system and set a tariff through which this contribution will be collected.

The implementation plan for Ashford identifies a number of critical pieces of infrastructure that need to be delivered in order to unlock the delivery of new houses and employment sites. Ultimately the cost of this infrastructure will be recovered through the tariff, however the initial capital sum required to deliver the infrastructure cannot be provided up front by the developers.

It is on this basis that the infrastructure proposal is a early contender for the RIF. The RIF will 'forward fund' the infrastructure on the basis that the tariff provides the mechanism for recovering that investment.

Another early contender for support from the RIF is the provision of the green infrastructure and access management services required to mitigate the impact of development in the area surrounding Thames Basin Heaths. This second example serves to illustrate the importance of ensuring that the regulations do not preclude the use of CIL to support the provision of services as well as physical infrastructure.

A related issue illustrated by these examples is to emphasise the importance of ensuring that the regulations do not undermine the operation of existing tariff systems that have been, or are in the process of being, established.

We agree with the assessment that sub-regional infrastructure can often be the most critical type of infrastructure in terms of unlocking significant housing or economic development. We concur that it is important that CIL is able to contribute to towards the cost of such infrastructure. In this context we believe it is important that the regulations allow for the Regional Planning Body to charge CIL. We propose to work with local authorities over the course of the summer with a view to agreeing the basis on which items of infrastructure might be determined as being of sub-regional or regional significance.

By way of illustration the delivery of East-West rail is an example of the kind of infrastructure that may fall into this category. This is identified in the South East Plan as a key piece of infrastructure and, through the Regional Transport Board the Assembly and SEEDA are working with local authorities to ensure its delivery.

A key assumption throughout the project's development has been that a significant proportion of its cost will be forthcoming through contributions from the private sector. Given the scale of development proposed along the corridor the quantum of any 'regional' contribution per dwelling is unlikely to have an adverse impact of the deliverability of individual development proposals. However, the cumulative effect of those contributions will be significant and play a key role in delivering the scheme.

There are two issues arising from our consideration of the document that we believe require further discussion.

We note that the proposal is to retain a modified S106 regime. We also note that the proposal is that contributions towards on-site infrastructure and the provision of affordable housing will remain within the remit of the S106 regime. We believe that there is a need to clarify how a local authority might capture a contribution towards the provision of affordable housing arising from smaller scale housing proposals. In these circumstances the provision of affordable housing on the site itself may not be appropriate. However it may still be appropriate for the site to make a contribution towards off-site provision of affordable housing. We believe it is also important to ensure that clarity is provided as to whether contributions payable under the S106 regime would have priority over payments due in respect of CIL.

We also believe that there is an issue in relation to the extent to which housing developments promoted by Housing Associations and/or Registered Social Landlords might be liable for CIL. This was an issue that emerged during the previous debate on the proposal for a planning gain supplement. We note that the presumption is that exemptions to the liability for CIL will be very limited; however we believe that further discussions on this issue are necessary.

A key message arising from the debate on the CIL was the importance of resisting the temptation to be overly prescriptive in the drafting of the regulations. We support the approach adopted in the Planning Bill to be provide an enabling framework and this philosophy needs to be carried through into the regulations. Local authorities require the regulations to be flexible and enabling if they are to be able to realise the potential of the CIL for the benefit of their community.

As the statutory Regional Planning Body we are keen to provide further input into the preparation of the draft regulations. I would therefore be happy to discuss any of the points set out above in greater detail at your convenience.

Yours sincerely,



Martin Tugwell
Director of Development

cc. Miles Gibson, CLG/Susan Stuart, GOSE

Extract from South East Plan

Infrastructure Definition

Transport	Airports, ports, road network, rail network, travel management systems, other public transport improvements
Housing	Affordable Housing Gypsy and traveller sites
Education	Further and Higher Education Secondary and primary education Nursery
Health	Acute care and general hospitals Mental hospitals Health centres/primary care trusts Ambulance services
Social Infrastructure	Supported accommodation Social and community facilities Sports centres Open spaces, parks and play space
Green Infrastructure	Outdoor recreation and sports facilities, parks, gardens and allotments, tracks and pathways, natural and historic sites, canals and water spaces, as well as accessible countryside. A network of multi-functional green spaces in urban areas, the countryside in and around towns, and the wider countryside.
Public Services	Libraries Cemeteries Emergency Services
Utilities and Waste	Water (including water supply and wastewater treatment) Energy (including renewable and non-renewable) Waste management (including waste disposal and recycling)
Flood Defences	Coastal and Fluvial