

**SOUTH EAST ENGLAND REGIONAL ASSEMBLY  
REGIONAL PLANNING COMMITTEE**

Date: 19 March 2008

Subject: **Community Infrastructure Levy**

Report of: Director of Development  
South East England Regional Assembly

**Recommendations:**

It is recommended that the Committee:

- i) endorse the analysis of the key issues set out in this report as the basis for engaging with Communities and Local Government during the preparation of the regulations for the Community Infrastructure Levy;
- ii) consider the draft regulations in detail at a future meeting following their publication.

**Purpose of the Report:**

To provide members with an update on the proposal to empower local authorities to apply the Community Infrastructure Levy and to seek agreement on the key issues arising from that proposal.

**Key Issues:**

In January CLG published a document that sets out the current Ministerial thinking on how to take forward the provisions within the Planning Bill to empower local authorities to apply the Community Infrastructure Levy to new development.

The proposal to introduce the CIL represents a major opportunity for local authorities to fulfil one of the pre-conditions for effective delivery identified in the South East Plan Implementation Plan. Drawing on the experience of implementation accumulated in the region to date the paper identifies a number of issues that need to be taken into consideration by Government in the preparation of the accompanying regulations.

The over riding message that arises from the analysis to date is the critical importance of Government resisting the temptation to be overly prescriptive in the drafting of the regulations. Local authorities require flexibility to apply the CIL if they are to maximise its benefit to their communities.

## **1. Context**

- 1.1 As part of the Planning Bill the Government is introducing provision for the Community Infrastructure Levy (CIL). The Bill allows for regulations to be published that will empower local planning authorities to apply the CIL on new development (but not household development by homeowners) in their area to support infrastructure delivery. The regulations could also allow any other authority with responsibility for town and country planning (such as the Regional Planning Body) and the Secretary of State to charge CIL, although in all cases it would be for the local planning authority to collect it.
- 1.2 The Government has made it absolutely clear that while it sees CIL as making a significant contribution towards the cost of providing infrastructure, it will be part of a wider package of funding. The Government has said that core public sector funding will continue to bear a significant burden in terms of delivering infrastructure.
- 1.3 Progress with the Planning Bill through Parliament is on track to enable Royal Assent to be granted by the summer recess. Government has signalled that it should be ready to consult on draft regulation by autumn 2008, and have them finalised for spring 2009. The regulations will require the approval of the House of Commons before becoming law.
- 1.4 In January CLG published a document that sets out the current Ministerial thinking on how to take forward the provisions in the Planning Bill in respect of CIL. This paper discusses the key issues associated with the proposal for CIL. This will provide the basis for the secretariat discussing those matters with CLG. A report on the draft regulations will come to this Committee in due course.

## **2. Background**

- 2.1 The Government believes that development should make more of a contribution towards the provision of infrastructure and that the development industry should have greater certainty about that contribution will be. Research undertaken by the Government has highlighted that, nationally, only 14% of all developments made a contribution towards the cost of community infrastructure.
- 2.2 The potential to secure contributions from large scale developments is effectively targeted by the majority of local planning authorities. However, it is the smaller developments (typical of the kind of development seen in our region) where there is the potential to increase the contribution made by development towards the cost of providing community infrastructure.
- 2.3 This potential is a fundamental component of the Assembly's approach to infrastructure as set out in the Implementation Plan. This identified three 'pre-condition' for effective implementation:
  - i) increased levels of public sector investment;
  - ii) increasing the contribution from the private sector;
  - iii) increasing the alignment of investment programmes.

- 2.4 The proposal for the Community Infrastructure Levy addresses the second of these pre-conditions. Significantly the proposal has received support in principle from representative organisations such as the British Property Federation, the House Builders Federation and the CBI.
- 2.5 The Assembly has provided leadership on implementation issues at the regional level. Local Planning Authorities are now required to prepare implementation plans in support of their Local Development Frameworks; an assessment of their content will in turn form a test of soundness for the LDF. The widespread adoption of a 'business planning' approach to infrastructure planning provides a sound basis on which local authorities are able to identify the contribution that the private sector needs to make towards its provision. The local implementation plan will therefore provide a robust basis on which to develop a draft schedule of charges for the CIL in a particular area.
- 2.6 It is important to note that the planning obligations regime (commonly known as Section 106 or S106 agreements) will continue to operate alongside CIL. The Government proposes that these will be used to deliver site-specific infrastructure and funding for affordable housing provision.

### **3. Consideration**

- 3.1 The regulations are expected to set out what is meant by infrastructure. At this stage Ministers have suggested that they will propose a wide definition. The definition of infrastructure adopted in the South East Plan fulfils this requirement and could be used as the basis for the purposes of CIL.
- 3.2 It will be 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 supporting the provision of physical improvements. The CLG document indicates that Government is also minded to allow for the use of CIL to enhance the use of existing infrastructure.
- 3.3 Our experience with the South East Plan has shown that the significance of the implementation plan is not diminished by it not being formally a statutory document. Indeed keeping the implementation plan as a 'living' document, capable of revision and amendment without the need to go through an extended statutory process, strengthens our ability to target the resources available to maximum benefit.
- 3.4 Thus while it is important that the schedule setting out the basis for CIL is considered as part of the testing of the LDF, it is not essential that that schedule itself forms part of the statutory document. Such an approach would unnecessarily fetter the ability of a local planning authority to adjust the schedule in the light of experience.
- 3.5 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 address at a future point in time. Experience and judgement enables an estimate of the cost of that infrastructure to be made.

- 3.6 This reality needs to be reflected in preparing the schedule setting out the basis for CIL. It is important to remember 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 development industry. While the scale of this contribution may be easier to define in the short term, it will be important that it is 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 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.
- 3.7 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.
- 3.8 Delivery of sustainable economic growth requires investment in a wide range of infrastructure. The regulations should be drawn in such a way that do not overly prescribe who is eligible to receive CIL. Circumstances will vary from authority to authority. As a consequence the regulations should be drafted in a way that enables authorities to have the maximum flexibility in the use of contributions collected via CIL, subject to the caveat that there is a robust basis set out in the implementation plan.
- 3.9 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.
- 3.10 The CLG document highlights the intention of Ministers to ensure that the regulations provide local authorities with flexibilities to use the more predictable flow of income to the benefit of their communities. It is proposed the regulations will enable local authorities to reserve CIL receipts for expenditure that may be incurred in the future. It is also proposed that the regulations will make provision for giving loans that enable local authorities to deliver infrastructure in a timely manner.
- 3.11 This latter flexibility is particularly critical in that it is a recognition by CLG of the vital role that forward funding mechanisms, such as the Regional Infrastructure Fund, have in the delivery of infrastructure.
- 3.12 By way of illustration consider the progress made on infrastructure delivery in 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.

- 3.13 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.
- 3.14 It is on this basis that the infrastructure proposal is a early contender for the RIF being established by the Assembly and SEEDA. The RIF will be able to 'forward fund' the infrastructure on the basis that the tariff provides the mechanism for recovering that investment.
- 3.15 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 services as well as physical infrastructure.
- 3.16 A related issue illustrated by these examples is to emphasise the importance of ensuring that in preparing the regulations Government is mindful of the need to support existing tariff systems that have been, or are in the process of being, established.
- 3.17 The CLG document notes that sub-regional infrastructure can often be the most critical type of infrastructure in terms of unlocking significant housing or economic development. It therefore argues that it is important that CIL is able to contribute to towards the cost of such infrastructure.
- 3.18 There is a need for the Assembly, as the Regional Planning Body, to work with local authorities and identify those items of infrastructure that are of truly sub-regional, or regional significance.
- 3.19 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.
- 3.20 A key assumption throughout its development has been that a significant proportion of its cost will be forthcoming through developer contributions. Given the scale of development proposed along the corridor the quantum of any contribution per individual dwelling is unlikely to have an adverse impact of the affordability of development proposals. However, the cumulative effect of the individual contributions will be significant and play a key role in delivering the scheme.
- 3.21 It is therefore critical that the regulations retain the ability for the Regional Planning Body to identify infrastructure of sub-regional or regional significance which requires a contribution to be collected as part of the CIL.
- 3.22 There are two issues that the CLG document does not address and which need to be given further consideration.

- 3.23 The Government has stated that it will retain a modified S106 regime. It has also stated that it sees that contributions towards on-site infrastructure and the provision of affordable housing will remain within the remit of the S106 regime. We would welcome further discussion on this issue. 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.
- 3.24 The second issue relates to 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. The CLG document indicates that the presumption is that exemptions to the liability for CIL will be very limited. Again, we would welcome further discussion on this issue.

#### **4. Concluding Remarks**

- 4.1 The proposal to introduce a Community Infrastructure Levy represents a major opportunity for local authorities to fulfil one of the pre-conditions for effective delivery identified in the South East Plan Implementation Plan; increasing the contribution from the private sector.
- 4.2 The South East Plan has long advocated the importance of adopting a business planning approach to infrastructure provision at the regional level and this is now being taken up, with increasing effectiveness, at the local level.
- 4.3 The emphasis on spatial planning has served to highlight the need to look beyond traditional planning skills in order to deliver sustainable economic growth. Many aspects of the Implementation Plan require investment to be made by agencies that have traditionally not had a strong relationship with the planning system. However, given their central importance of this investment to realising sustainable communities it is appropriate for local authorities are able to direct contributions collected through the planning system towards their delivery.
- 4.4 This serves to emphasise the importance of spatial planners working with the delivery agencies to better understand the existing funding and delivery mechanisms for all infrastructure. This will enable local authorities to maximise the opportunity for CIL to complement existing mechanisms.

- 4.5 Arguably the over riding message that arises from the debate to date is the critical importance of Government resisting the temptation to be overly prescriptive in the drafting of the regulations. The legislative framework in the Planning Bill sets out to be enabling 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.

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