

## **Briefing Paper - The Housing White Paper – Community Infrastructure Levy and other Planning Reforms**

### **1. Summary**

1.1. On the 7th February 2017 the Government finally published the delayed White Paper on housing which seeks to rectify the UK's housing shortage. It contains various planning reforms aimed at speeding up the house-building process. It is also accompanied by publication of the Government commissioned independent report on the Community Infrastructure Levy (CIL). The accompanying CIL report contains proposals for major reform of CIL and a move back to Section 106 Agreements for large development schemes. This briefing paper focuses on the CIL recommendations, particularly given Member's recent concerns about the lack of affordable housing being delivered on new brownfield sites. This report also considers the other major planning reforms mentioned in the White Paper and accompanying documents.

### **2. Independent CIL Report**

2.1 An independent group with members from across the development industry and local government was appointed in 2015 to assess whether the CIL regime was effective in providing infrastructure funding to support development. A report on its findings, issued to the Government in November 2016, has now been published with the White Paper. The report contains a number of conclusions critical of how CIL has operated to date including:

- Where CIL has been adopted, it has raised only a fraction of the receipts anticipated at inception of the regime and affected the level of affordable housing that can be delivered;
- Many authorities have not implemented CIL, leaving increased reliance on Section 106 Agreements;
- CIL has not resulted in infrastructure being provided when needed to support development (or affordable housing), and is particularly unsuited to larger developments.

- CIL is overly complex and bureaucratic.

2.2 The Report stops short of recommending abolition of CIL although this is considered. However, it recommends extensive reform to effectively replace CIL with a simpler low-level **Local Infrastructure Tariff (LIT)** covering all developments, and Section 106 obligations for larger (or strategic) developments. Although the review focuses on residential development, the report suggests that it applies equally to commercial development. In brief terms the report recommends that the new LIT regime would work on a mandatory basis as set out below for all local authorities, except where levels of LIT would be too low to make it worthwhile collecting.

### **Rate Setting**

2.3 LIT would be imposed by the Local Planning Authority (LPA) on developers on a simplistic nationally-based formula set at a rate of £ per sqm of development. The suggestion is that this level would be low enough not to affect development viability such that exemptions and reliefs should not be necessary. The level floated is between 1.75 - 2.5% of the sale price for a standard 100 sqm 3-bed family home in the relevant area. LPAs could charge lower rates for different categories of commercial development (but not higher) where they had supporting evidence that a lower rate was necessary.

### **Application of LIT**

2.4 LIT would apply to residential development as well as commercial development. The current "existing floorspace credit" would be largely dismantled for the purposes of simplicity: LIT would therefore be applicable to replacement buildings and changes of use, and charged on gross floorspace. Extensions would be charged on net additional floorspace (as per the current CIL regime). Only refurbishments would escape from LIT.

### **Exemptions**

2.5 In principle, all developments would pay LIT, but the report notes that the Government might want to exempt a few categories of development such as affordable housing and starter homes. In any event, the process for such exemptions should be simplified.

### **Monitoring**

2.6 The report recommends abolishing the LPAs "Regulation 123 infrastructure list" as it largely gave authorities a way to continue imposing Section 106 planning obligation contributions on developers. This would be replaced by an obligation on LPAs to publish information about how funds are spent on infrastructure through their existing Authorities' Monitoring Report.

## **Larger Developments – Section 106 Agreements**

- 2.7 Larger developments would be subject to Section 106 Agreements in addition to LIT. The recommended threshold for a "larger development" has been set at a fairly low level of 10 units for residential. Assuming a similar level of threshold was set for commercial development, this would mean that most major commercial developments would be subject to Section 106 obligations as well as LIT. The restriction preventing pooling of funds for more than 5 developments would be removed (as abolition of the Regulation 123 list would make it unnecessary).
- 2.8 Currently, site specific issues and affordable housing continue to be dealt with through Section 106 Agreements even where CIL is payable. As a result, it would appear that the main change from these proposals would be the re-introduction into Section 106 Agreements of monetary contributions for wider public amenity and infrastructure needs. There could be a very real risk of double counting if contributions to infrastructure, which ought to be covered by LIT, can now also be contained in a Section 106 Agreement. However, the report also suggests LPAs should have flexibility to both:
- Offset LIT payments against Section 106 contributions; and
  - Allow LIT payments to be made in kind (presumably through a Section 106 agreement).
- 2.9 In response to the possibility that developers may see an inevitable increase in Section 106 obligations under these proposals, the report recommends strengthening the current Regulation 122 test to ensure that only necessary and appropriate obligations are imposed. A call to further standardise Section 106 drafting and make it more transparent is suggested in an effort to speed up the process more generally. Given the numerous previous attempts at standardisation, it is not clear how successful this recommendation would be given that drafting is often the result of particular needs of individual LPAs and the complexities of the specific development.

## **Strategic Infrastructure Tariff (SIT)**

- 2.10 New-style Combined Authorities (e.g. Greater Manchester) would be permitted to seek an additional SIT (similarly to the current London Mayor's CIL) for a small number of identified infrastructure projects.

## **Next steps**

- 2.11 The report suggests moving to this new system by 2020. The White Paper notes that the Government is considering the report's recommendations and will make an announcement at the Autumn budget 2017.

### **3.0 Implementation of Worthing's CIL and possible implications of the Independent Review**

3.1 The implementation of CIL across Worthing has certainly not gone as originally planned and many of the findings of the Independent CIL review reflect the local position.

3.2 When evidence was submitted by Consultants in support of the Council's draft charging schedule in 2014, it was hoped that collecting CIL would help to make a significant contribution towards meeting local infrastructure costs without impacting on the level of affordable housing that could be secured. However, as recent applications on brownfield sites have demonstrated the level of CIL has not been as high as expected and it has affected the viability of schemes to the extent that, in many instances, the level of affordable housing secured has been dramatically reduced. Part of the problem has been the Government's introduction of the Vacant Building Credit but there is little doubt that CIL has had an impact on the ability to secure affordable housing. Many commentators have also highlighted the significant increase in construction costs over the last few years as a contributory factor to increasing viability issues particularly with brownfield sites.

3.3 The Independent CIL report noted that it received a very mixed evidence from our respondents on the impact of CIL on affordable housing. However, there was an acknowledgment that where CIL is a first charge on developers then the contribution to affordable housing had inevitably reduced. Whilst some local authorities did not express significant concern some developers expressed deep reservations as to the impact of CIL and the report therefore concluded that either:

- there has been an acceptance that, on the basis of a viability approach to affordable housing, the increased burden of CIL would inevitably result in a reduction of affordable housing, or
- charging authorities have taken sufficient account of their policy requirements for affordable housing in setting their charge which has limited the reduction in affordable housing – but has reduced the amount of money raised of infrastructure.

3.2 One issue that has surfaced since the adoption of CIL is the calculation of gross internal area (GIA). In calculating CIL, the Council's adopted Charging Schedule states that it will use the HMRC - Valuation Office Agency (VOA) definition of GIA. This definition includes communal areas (corridors, stairwells, plant rooms etc). However, a local developer has challenged this approach on the basis that the financial viability reports used by the Council to support its proposed Charging Schedule excluded such communal areas when considering flat schemes. Whilst, this issue was raised at the Examination, the Inspector did not suggest any variation to the Council's draft Charging Schedule and the Council has since received Counsel's opinion that suggests that any challenge is unlikely to be successful.

- 3.3 Notwithstanding the above it is argued that the higher CIL charge based on charging communal areas for flat schemes has further undermined the Council's ability to deliver affordable housing on brownfield sites.
- 3.3 Many Councils are concerned about the inability of brownfield developments to meet affordable housing thresholds. Earlier this month Brighton and Hove City Council's Economic Development Committee considered a report in relation to the % of affordable housing to be secured on new development sites above 10 dwellings. The report highlighted that the Council was "exploring" proposals that would force housebuilders to make public economic assessments showing why they could not meet the required levels of affordable housing following an outcry over a number of major projects where developers offered considerably lower levels of affordable housing or offered to pay the council rather than build the homes themselves. It is also worth stressing that Brighton and Hove City Council has not yet introduced CIL but is still finding a number of major projects are only delivering a fraction of the required level of affordable housing.

#### **4.0 White Paper Planning Reforms**

- 4.1 The White Paper and accompanying documents announce a significant number of new reforms to the planning system. Principal changes include the following:

*Development control reforms aimed at speeding up grant of planning permission.*

- Reducing the time period for commencement of development: Introducing a new policy encouraging LPAs to reduce the standard period for commencement of development from three years to two years for housing development, except where this might cause viability or deliverability issues (for outline planning permissions, presumably this means submission of reserved matters must be made within two years, rather than the current three).
- Planning Appeal fees: Introducing a new fee for making a planning appeal, of up to £2000 for Public Inquiries. Planning fees: Allowing LPAs to increase planning fees by 20% provided they re-invest the additional receipts in their departments.
- Material considerations: considering whether the applicant's development track record, and the likelihood that a site will in fact be developed, should constitute material considerations in determining a planning application.
- CPO for stalled sites: A consultation to be launched on new guidance encouraging use of CPO powers for stalled sites. Consideration will also be given of other techniques for assembling land seen elsewhere (e.g. 'pooling' in Germany).

- New phased Housing Delivery Test: A new policy making the National Planning Policy Framework (NPPF) presumption in favour of sustainable development (i.e. granting permission) take effect if delivery of housing falls below specified percentages of the LPA's assessed housing requirements (25% by 2018, 45% by 2019 and 65% by 2020).
- Provision of information by developers: New requirements for developers to notify an estimated start date for development on the planning application form for all proposals including housing; and a duty to update the LPA on progress of build out of homes.
- Simplifying the Completion Notice procedure: Removing the requirement for the Secretary of State to approve a completion notice; and allowing LPAs to serve a notice before the commencement deadline has passed, where works have already started.
- New Emphasis on Build to Rent and Affordable Private Rent. A new definition of Affordable Private Rent (APR) which will count towards developers' affordable housing requirements. The features of APR Rent would be:
  - Rent must be at least 20% below local market rents, with the discount to apply indefinitely. A commuted sum clawback would apply in the event of loss of APR homes (e.g. through sale).
  - 20% of homes within a Build to Rent scheme would need to be APR.
  - APR would need to be "family friendly rental": i.e. offered for a term of at least 3 years where the tenant so desires, with an option to terminate at 1 month's notice after an initial 6 month period.
  - Eligibility determined by local incomes and house prices.
- Starter homes: Removing the requirement for larger housing developments to include 20% starter homes. Replacing this with a new NPPF policy setting an expectation for all housing sites to deliver at least 10% starter homes.

#### *Local development planning*

- Local Plans: New powers to force LPAs to prepare local plans and keep them up-to-date, with a review at least every 5 years.
- Allocation of Strategic sites: New powers for combined authorities or elected mayors to allocate strategic sites for development.

- Housing Assessments: Consideration of options for introducing a new standardised approach to assessing housing requirements as the basis for calculating five year housing land supply, and strengthening the NPPF requirements to allocate sufficient land in local plans to satisfy the identified need.
- Selling off land: A new consultation will be undertaken to consider possibilities to extend powers of authorities to sell off land for development at less than 'best consideration' using powers under the Growth and Infrastructure Act 2013.
- Green Belt: Maintaining green belt protections and making it clear that green belt boundaries should only be considered for amendment where other reasonable options have been fully examined.
- Housing density: Further strengthening of NPPF policy to encourage higher densities of development to meet housing requirements.

4.2 Responses to the consultation on proposals in the White Paper are due by the 2 May 2017.

4.3 Generally the White Paper is supported by Officers. The move away from starter homes is encouraging along with the measures to provide greater diversity in the housing market to address the issue of affordability and the Government's new focus on a wider range of housing tenures is welcomed. There is clearly a need for more comprehensive measures to increase the supply of suitable land available for housing and to try and fix what the Government describes as the "broken housing market". The intention to join up development with infrastructure provision although this is hard to achieve given the infrastructure deficit that exists.

4.4 The proposal to increase planning fees is particularly welcome although the professional body the Royal Town Planning Institute (RTPI) comments that,

*'RTPI has strongly campaigned for more resources to be given to local authority planning departments and welcomes the Government's plans to allow local authorities to raise fees for planning applications up by 20% to be reinvested in LPAs. However we are concerned that these measures may not be sufficient to mitigate for years of under investment and resources need to be made available to enable the LPAs to cope with the demands the new Government policies outlined today will place on them.'*

## **5.0 Recommendation**

- 5.1 Members are requested to note the changes proposed in the White Paper and to provide any comments to assist Officers respond to the consultation by the 2nd May 2017.**

### **Local Government Act 1972**

#### **Background Papers:**

White Paper - 7th March 2017 including accompanying papers including the Independent CIL Review Report

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