

Agenda Item No. 4(h)

DERBYSHIRE COUNTY COUNCIL

**MEETING OF CABINET MEMBER – HIGHWAYS, TRANSPORT AND
INFRASTRUCTURE**

20 December 2018

Report of the Strategic Director – Economy, Transport and Environment

**GOVERNMENT RESPONSE TO CONSULTATION ON SUPPORTING
HOUSING DELIVERY THROUGH DEVELOPER CONTRIBUTIONS**

(1) **Purpose of Report** To update the Cabinet Member on the outcome of the consultation by the Ministry of Housing, Communities and Local Government (MHCLG) on ‘Supporting Housing Delivery Through Developer Contributions (SHDTDC)’ and to consider its likely implications for the County Council in securing and monitoring developer contributions.

(2) **Information and Analysis** As a follow-up to the consultations on the Housing White Paper, ‘Fixing our Broken Housing Market’ (February 2017) and ‘Planning for the Right Homes in the Right Places’ (September 2017), the Government published a consultation on 5 March 2018, on a package of reforms for the planning system. These included both revisions to the National Planning Policy Framework (NPPF) and reforms to the developer contributions system.

In its document [Supporting Housing Delivery through Developer Contributions](#), the Government put forward proposals to reform the existing system of developer contributions in order to address complexity and uncertainty in the current system.

The consultation sought to address the following:

- Reducing the complexity and increasing certainty for local authorities, developers and communities.
- Supporting swifter development.
- Improving market responsiveness of Community Infrastructure Levy (CIL).
- Increasing transparency over where developer contributions are spent.

The Council’s detailed response to the consultation was approved at the Cabinet Member meeting on 28 June 2018 (Minute No. 67/18 refers). Key issues raised in the County Council’s response were:

- Concern that the three scenarios proposed for lifting pooling restrictions would make the system more convoluted, less transparent and increase monitoring requirements. The County Council recommended that if pooling were to be removed in its entirety this would help to deliver the growth needed to support development in a timely manner, reduce the complexity of monitoring and reduce the incidence of challenge.
- Agreement that the setting of a CIL and the amount of consultation required should be proportionate to allow a charging schedule more reactive to market fluctuations.
- Agreement that the Regulation 123 list should be removed and replaced with an Infrastructure Funding Statement (IFS). The County Council suggested that an IFS should list the infrastructure required to support development in a local plan over a five year period with a section to address longer term strategic projects either within the plan period, or up to ten years. The IFS would also indicate how the infrastructure would be funded (i.e. CIL versus Section 106).
- Agreement that Section 106 monitoring fees should be allowed to be charged and, where there are two tier authority areas, consideration given to fees for each authority.
- Recommended the indexation of CIL should be via Building Cost Information Service's (BCIS) All in Tender price as this takes account of build costs and not the Consumer Price Index as house price indices can fall as well as rise, whilst the construction costs of infrastructure generally rise.
- Welcomed the option to introduce a Strategic Infrastructure Tariff (SIT), but advised this should not be limited to Combined Authorities and Joint Committees with strategic planning powers. It was strongly recommended that, as the delivery agent for large scale infrastructure, this opportunity should also be given to county councils to be an accountable body for a SIT.

The Government has now responded to the consultation feedback and full details are available on-line. A summary of the minor changes and implications for the County Council are outlined below:

Government view on the way forward	Potential Implications for Derbyshire County Council
Poling Resources 1. The Government accepts the argument that lifting the pooling restriction (on Section 106 planning obligations) in all areas would remove barriers to development, and could give local planning authorities the ability to secure more funding	The removal of the pooling restriction (limiting the number of obligations towards 1 project/item of infrastructure to 5) will: <ul style="list-style-type: none"> • allow a more responsive, efficient and flexible use of Section 106 contributions to fund the infrastructure required and its delivery in a timely manner; and

<p>through Section 106 to deliver the infrastructure needed to support development. It remains the Government's intention that the CIL should be used to secure contributions to address the cumulative impact of development in an area, and that the uptake and use of CIL should be incentivised.</p>	<ul style="list-style-type: none"> • reduce the number of internal processes required to identify projects and monitor spend, and will also allay the potential for challenge. <p>The Government is consulting on the draft amendments to the CIL Regulations later in 2018, when its intentions will be seen as to how it is intended to address the changes to the pooling restrictions and the approach to incentivising the take up of CIL.</p>
<p>CIL Charging</p> <p>2. The Government intends to take forward a modified proposal to ensure that regulations continue to require CIL charging authorities to consult on draft charging schedules, whilst removing the current statutory requirement for two separate rounds of consultation in every circumstance. This will ensure that charging authorities can decide the most proportionate approach to consultation, speeding up the time taken to introduce and amend charging schedules.</p>	<p>The streamlining of the consultation requirements for CIL to ensure they are more proportionate will allow a CIL to be more reactive to market conditions. Subject to the number of CIL charging authorities within Derbyshire, this may generate additional consultation work for County Council officers if rates are reviewed more regularly. This may also affect the amount of potential CIL income (depending on whether the housing market is rising or falling) to be collected by the charging authority and therefore impact on the amount of CIL available to fund infrastructure.</p>
<p>Regulation 123</p> <p>3. The Government proposes to remove the restrictions in Regulation 123 which currently prevent Section 106 agreements being used to collect contributions towards infrastructure included on a charging authority's 'Regulation 123 List'. New reporting standards, which are set out in the IFS, will address concerns about double dipping by ensuring that there is transparency over how developer contributions from both CIL and Section 106 planning obligations are being</p>	<p>The Regulation 123 list will be replaced by an IFS. The Government has recently made the preparation of an IFS part of the local plan making process to set out the infrastructure required, the anticipated funding from developer contributions, and how these contributions will be used. Annual reviews of the IFS should feed back into the review of the plan to ensure that the plan remains deliverable. As the County Council is responsible for the delivery of key strategic infrastructure, officers will therefore need to provide additional input into the plan making process and annual reviews to identify what</p>

used, rather than by placing formal restrictions in regulations.	infrastructure is required and how this will be funded.
Reporting 4. Government will require reporting of developer contributions from the CIL and Section 106 through the IFS on a statutory basis. This information is key in helping communities to better understand the benefits that are delivered alongside development.	Currently, the reporting of Section 106 income and expenditure is advisory. As the Government intends to make this a mandatory requirement, a comprehensive developer contribution monitoring system will be required across the County Council to ensure that all contributions and expenditure are monitored. The County Council will need to be able to provide an annual report to each of the local planning authorities to be included in their respective IFSs.
Fees 5. The Government intends to take forward proposals to make clear that local authorities can seek a fee from applicants towards monitoring planning obligations. In developing these proposals, the Government will consider how best to ensure that monitoring sums are set at an appropriate level.	In developing these proposals, the Government will consider how best to ensure that monitoring sums are set at an appropriate level. However, additional income will be available to the County Council for the monitoring of agreements.
Indexation 6. The Government proposes to consult further on changes to indexation of levy rates and the way in which it would be implemented. Government intends to test changes in relation to the House Price Index for residential development, and whether amendments are needed to reduce its volatility; and use of CPI for non-residential development.	In the response to the consultation, the County Council recommended that the indexation of CIL should be via the Building Cost Information Service's 'All in Tender price' index as this is most closely related to the build costs. The Government are planning to use alternative indices which are related to consumer spending which can go up as well as down rather than the cost of building which generally increases. It is unknown whether the indexation will impact on the amount available through CIL for infrastructure items identified to be funded through CIL.
Planning Process for Combined Authorities 7. The Government decided to take forward a modified proposal, to enable Combined Authorities	Currently, the collection of a SIT will be limited to Combined Authorities with strategic planning powers. Outside of this definition, groups of CIL charging authorities are encouraged to more

with strategic planning powers to take forward a SIT.	effectively support the delivery of strategic infrastructure through the cross boundary pooling of their local CIL receipts. This, however, is dependent on having groups of CIL charging authorities. To date, Derbyshire has Chesterfield as a CIL Charging Authority, with Derbyshire Dales having consulted on its draft charging schedule for adoption of a CIL.
In the longer term, the Government will bring forward proposals for allowing joint planning committees to charge the tariff, and will review options for giving other groups the power to levy a Tariff.	

At its meeting of Cabinet on 22 February 2018, a commitment was made to the wholesale review of the County Council's Developer Contributions Protocol (DCP) to encompass all relevant County Council service areas and ensure the DCP reflects the legislative changes arising from MHCLG's consultation on developer contributions (Minute No. 59/18 refers). The Government has committed to a consultation on the draft legislative changes later in 2018. Following the introduction of the legislation, a review of the Council's DCP will be undertaken.

(3) **Financial Considerations** There are no financial considerations directly associated with this report.

(4) **Legal Considerations** The recommendation in this report is made in the context of the County Council's responsibilities and services under the provisions of the Localism Act 2011 and the Planning and Compulsory Purchase Act 2004, Planning Act 2008 and CIL Regulations 2010 (as amended).

(5) **Social Value Considerations** The relevance of social value in terms of social, economic and environmental wellbeing has been considered in the preparation of this report. Meeting the current and future needs of communities and the management of scarce resources (i.e. sustainable development) is central to the role of local and county planning authorities in preparing and implementing their local plans and the provision of infrastructure to support those plans.

Other Considerations

In preparing this report the relevance of the following factors has been considered: prevention of crime and disorder, equality and diversity, human resources, environmental, health, property and transport considerations.

(6) **Key Decision** No.

- (7) **Call-In** Is it required that call-in be waived in respect of the decisions proposed in the report? No.
- (8) **Background Papers** Held on file within the Economy, Transport and Environment Department. Officer contact details – Alison Richards, extension 39667.
- (9) **OFFICER'S RECOMMENDATION** That the Cabinet Member notes the report and the impact of the changes proposed by Government to the system of developer contributions on Derbyshire County Council.

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