

The ADEPT Response to the Consultation on: Supporting Housing Delivery Through Developer Contributions

Introduction

The Association of Directors of Environment, Economy, Planning and Transport (ADEPT) represents Place Directors from county, unitary and metropolitan local authorities, along with Local Enterprise Partnerships (LEPs). ADEPT members are at the very heart of maximising sustainable growth in communities throughout the UK. This is our response to the Government's consultation on the National Planning Policy Framework (and associated documents). ADEPT has also produced a position statement on Housing and the Industrial Strategy which are attached. In the first section we make some general comments before responding to the detailed questions set out in the consultation.

1.0 ADEPT welcomes the opportunity to comment on the consultation on: *Supporting Housing Delivery Through Developer Contributions* because it is intrinsically linked to the provision on infrastructure in its widest sense. ADEPT would support the objective of the Government's commitment, set out in the 25 Year Environmental Plan, to explore how tariffs could be used to steer development towards the least environmentally damaging areas and to secure investment in natural capital. However, in its submission on the National Planning Policy Framework (NPPF) ADEPT points out that the linkages between the 25 Year Plan and the draft NPPF are not as clear or well developed as they should be.

2.0 ADEPT would like to see a planning system that can deliver certainty, where infrastructure, environment and industrial strategies at the local level are aligned with national objectives. Delivered through strategy at national, regional and local levels. Our vision is for local planning authorities to be not only responsible for providing services now; but for legislation to be in place where they are empowered to design strategies and invest in infrastructure to enable to the future, laying the foundations for the communities we need to become.¹

3.0 Rather than creating a ‘slow and expensive and uncertain process’, planning is vital to providing clarity and confidence for developers and those intending to make investment decisions that underpin growth:

“Planning is critical to providing clarity and confidence for investments by markets so that they are able to deliver good development. Planning can improve the quantity and quality of land for development, ready land for construction (for example, by treating contaminated land), resolve ownership constraints (where there are many different owners), and bring forward investment by ensuring that the right infrastructure (such as transport and public amenities) are in place. In these and other ways, planning can lower the overall cost of new development, and open-up opportunities for development.”²

4.0 ADEPT in its response to the Green Paper points out: “We believe that growth must be inclusive, sustainable and high quality if it is to be successful.”³ The RSA Commission advocates strongly for the concept of inclusive growth. The Commission has recommended:

‘High quality physical infrastructure – such as railways, roads, local transport, new developments and broadband – is essential in building economic connectivity, maximising the efficiency of productive activity and connecting labour markets to areas of economic opportunity. But the value of physical infrastructure is diminished when particular places or neighbourhoods are unable to connect to its benefits, for example because the skills base is too low to take advantage of job opportunities, or health and complex social issues act as barriers to participation.’⁴

5.0 ADEPT considers that whatever mechanism is used to capture value and fund infrastructure it must be effective and properly fund the impacts of development in a way that the public can see operates fairly and transparently.

6.0 The current guidance in respect of S.106 agreements states that a planning obligation may only constitute a reason for granting planning permission for the development if the obligation is (The Community Infrastructure Levy Regulations 2010):

- (a) necessary to make the development acceptable in planning terms;
- (b) directly related to the development; and,
- (c) fairly and reasonably related in scale and kind to the development.

Planning obligations may only constitute a reason for granting planning permission if they meet the tests above that they are necessary to make the development acceptable in planning terms, directly related to the development, and fairly and reasonably related in scale and kind. It is therefore a misconception that S.106 obligations are a burden that in some way can be argued away because of viability. They are necessary to make an unacceptable development acceptable. The local community has to deal with and endure the impacts of development and S.106 obligations are designed to address those impacts. Developers should be under a duty to show why a development can proceed without a planning obligation. In which, case it should be an entirely transparent and open process. One of the reasons why communities are mistrusting of development is they see the consequences but are deprived from an opportunity to see, and form a judgement on, the costs and profits from development. Developers are entitled to reasonable profits, otherwise development would not come forward, but there needs to be an entirely open book approach to assessing viability.

7.0 Many authorities have guidance and formulae based on impact assessments. These clearly set out requirements and how these have been calculated. This helps to ensure that it is an open process. Many also produce annual monitoring reports outlined how much S106 has been requested, collected and spent.

8.0 The basics of viability assessments are well-known so a standardised approach to the content and layout of viability assessments, including calculating costs and values, would allow for greater transparency and comparison between different sites. A clear approach to defining the basis for a Benchmark Land Value/Site Value would be very helpful. For

example, the Benchmark Land Value should take into account the latest adopted planning policies and if the purchase price did not do this then it should not be used by developers.

9.0 There should be clear guidance in the NPPF and NPPG on how a local planning authority can assess and recover contributions that were determined unviable at decision taking stage, but can be proven viable at implementation stage, for instance where a higher final sales value was achieved than identified through the viability assessment.

10.0 Paragraph 27 refers to development being delayed by negotiations for section 106 planning obligations. Some of the challenges associated with viability and the delays that this creates could be addressed by tackling it at an earlier stage in the planning process. For example, at the site proposals stage developers should be required to confirm whether or not their site is viable and the assumptions on which this is based. Such an approach would lead to a far more informed approach with only those sites which are truly deliverable, without the need for being subsidised through public funding, coming forward, unless there is a realistic expectation that this would be forthcoming. This would supplement, not replace, other planning considerations involved in plan-making and the site selection process.

11.0 Proposals to ensure 'open book' accounting and transparency (paragraphs 61 and 62) are welcomed, but ADEPT would point out that many sites have already been optioned or purchased and the question of how cases that pre-date the new NPPF needs to be addressed.

12.0 At present too many unviable sites get not only allocated, but receive planning permission. This often leads to unviable sites being promoted. This is because Local Planning Authorities could be unable to demonstrate a five year land supply therefore leaving themselves vulnerable to appeals and enabling developers to bring forward additional sites. This also creates major problems for infrastructure and service providers understanding the impact of development and how to plan additional provision.

13.0 For this reason, although the consultation is seeking views on CIL and S.106 regimes ADEPT feels it is appropriate to make the general point about Land value capture needs to be properly addressed as part of the planning process. It has been considered by the Government Office for Science as part of Future of cities in a paper from February 2016.⁵ The Royal Town Planning Institute (RTPI) has commissioned new research to look at how other countries can offer the UK alternatives to fund infrastructure through capturing the uplift in land value resulting from planning permission being granted or public investment being made on or near a piece of land. The project will compare the current Land Value Capture mechanisms used in the UK; S.106 agreement and Community Infrastructure Levy (CIL) with three others: a simple tariff mechanism and two variants of the North American Impact Fee approach. The RTPI argues that the current model will miss capturing a potential £185bn of total land value increase over the next 20 years.⁶

14.0 ADEPT would point out that it is not only the land value, financing and construction costs that are important but also the costs of maintenance and upkeep of places, assets and infrastructure that needs to be factored in. These are costs that often fall on communities and local authorities.

15.0 Adams *et. al.*, have reached the following conclusion in a recent study carried out for the RTPI:

“Ultimately, changes that have narrowed the focus of planning and in particular restricted its ability to respond positively to pressures for urban development have served to damage, rather than enhance, long-term economic prosperity, let alone environmental sustainability and social cohesion. It is time to think again from first principles exactly how the benefits of planning can best be realised. If the full benefits of planning are to be realised, we need reforms that exploit its true potential to reconcile economic, social and environmental challenges through positive and collective action, and which confront those sectoral interests that seek only short-term, self-interested solutions.”⁷

16.0 ADEPT has responded separately to the consultation on the draft NPPF and PPG it has also set out its position in respect of the Housing White Paper (fixing our broken housing market) 2017, Planning and Affordable Housing for build for rent (2017); and Planning for the Right Homes in the Right Places consultation 2017. This response should be considered in the context of those earlier consultation responses. All of which can be found on our web site.⁸ It is understood that the Government's focus is on housing delivery however, this does run the risk that the NPPF does not adequately focus on delivering on areas of real concern to proper planning, that is to say, high quality sustainable communities of the future that provide for growth, with the necessary infrastructure and protect what is important in the historic and natural environment, to provide places that people want to live in and visit.

17.0 Morphet and Clifford⁹ have undertaken a recent research project that sets out a number of recommendations to government at page 6, to support local authority housing delivery). In particular, the fiscal and financial measures recommended in the report would also help deliver the much need housing the government seeks.

18.0 ADEPT's response to the specific questions is as follows:

Question 1 Do you agree with the Government's proposals to set out that:

- i. Evidence of local infrastructure need for CIL-setting purposes can be the same infrastructure planning and viability evidence produced for plan making?**

ADEPT agrees that evidence can be the same.

- ii. Evidence of a funding gap significantly greater than anticipated CIL income is likely to be sufficient as evidence of infrastructure need?**

ADEPT agrees with this.

- iii. **Where charging authorities consider there may have been significant changes in market conditions since evidence was produced, it may be appropriate for charging authorities to take a pragmatic approach to supplementing this information as part of setting CIL – for instance, assessing recent economic and development trends and working with developers (e.g. through local development forums), rather than procuring new and costly evidence?**

ADEPT agrees. It may be that a review of development costs may be all that is required.

Question 2 Are there any factors that the Government should take into account when implementing proposals to align the evidence for CIL charging schedules and plan making?

There may be circumstances where it is not possible for example, if a Local Plan is delayed and an authority wishes to bring their CIL Charging Schedule forward in advance of their Local plan.

Question 3 Do you agree with the Government’s proposal to replace the current statutory consultation requirements with a requirement on the charging authority to publish a statement on how it has sought an appropriate level of engagement?

ADEPT supports this proposal. Although the formal two stage consultation is generally advisable, it is not always necessary and it is welcomed that this is being recognised to speed up the process for reviewing a CIL Charging Schedule.

Question 4 Do you have views on how guidance can ensure that consultation is proportionate to the scale of any charge being introduced or amended?

One way would be to remove the requirement for hard copies of consultation documents to be provided.

Question 5 Do you agree with the Government’s proposal to allow local authorities to pool section 106 planning obligations:

- i. **Where it would not be feasible for the authority to adopt CIL in addition to securing the necessary developer contributions through section 106?**

ADEPT would support the proposal to remove the S106 pooling restriction for CIL charging authorities. However, the proposal to remove the pooling restriction in certain circumstances only for non-charging authorities is overly complicating the matter.

The original objective of the pooling restriction was to encourage local authorities to introduce CIL. In areas where viability has allowed, the majority of local authorities have now introduced CIL. It would be simpler to remove the S.106 pooling restriction in its entirety. The benefit of pooling was that it also allowed cumulative impacts to be addressed over a range of projects. Similarly, the constraint on requesting S.106 for developments of less than 10 dwellings mitigates against properly addressing the cumulative impacts.

ii. Where significant development is planned on several large strategic sites?

ADEPT supports this subject to the response to question 7.

Question 6

i. Do you agree that, if the pooling restriction is to be lifted where it would not be feasible for the authority to adopt CIL in addition to securing the necessary developer contributions through section 106, this should be measures based on the tenth percentile of average new build house prices?

ADEPT does not agree. This is not practicable. Judgements relating to whether authorities have house prices in the lowest 10% could be complex, and how would the regulations take into account changing house prices? There could also adversely affect the perception of an area if it were considered to be part of a low value category, which in turn could be detrimental to the growth and well-being of an area.

The proposed removal of the pooling restriction would only last 3 years and this would make forward planning for a Local Authority very challenging, particularly as a large scheme would take longer than 3 years to implement. The proposal is likely to lead to greater uncertainty for both developers and local authorities.

ii. What comments, if any, do you have on how the restriction is lifted in areas where CIL is not feasible, or in national parks?

The approach should be consistent.

Question 7 Do you believe that, if lifting the pooling restriction where significant development is planned on several large strategic sites, this should be based on either:

- i. a set percentage of homes, set out in a plan, are being delivered through a limited number of strategic sites; or,**
- ii. all planning obligations from a strategic site count as one planning obligation?**

ADEPT does not see how practically such thresholds or criteria could be administered without making the already complex regulations even more complicated, and is likely to lead to greater uncertainty thus have a negative effect on delivery.

Question 8 What factors should the Government take into account when defining 'strategic sites' for the purposes of lifting the pooling restriction?

See ADEPT's response to question 7.

Question 9 What further comments, if any, do you have on how pooling restrictions should be lifted?

ADEPT would support the removal of pooling restrictions completely.

Question 10 Do you agree with the Government's proposal to introduce a 2 month grace period for developers to submit a Commencement Notice in relation to exempted development?

ADEPT would support this proposal. See also the response to Question 11.

Question 11 If introducing a grace period, what other factors, such as a small penalty for submitting a Commencement Notice during the grace period, should the Government take into account?

The grace period must be a significant financial penalty otherwise this will be viewed as an extended deadline only and could become a further burden on local authorities in terms of CIL enforcement e.g. checking if developments have commenced, chasing notices etc.

Question 12 How else can the Government seek to take a more proportionate approach to administering exemptions?

ADEPT considers that residential extensions¹⁰ and annexes become a mandatory exemption thus avoiding the costly administration associated with local authorities having to process such exemptions for no end financial gain.

ADEPT considers that there are now too many exemptions. The consequence of this is that CIL operates in conflict with one of its original objectives of being introduced. This objective was to redress the balance whereby only major development contributes to infrastructure through S.106 even though small and medium scale development has a cumulative impact on infrastructure. A low level standard tariff for all, as proposed in the CIL Review, would have assisted in this respect and would be relatively easy to administer.

Question 13 Do you agree that Government should amend regulations so that they allow a development originally permitted before CIL came into force, to balance CIL liabilities between different phases of the same development?

ADEPT agrees, although regulations must avoid a situation whereby a local authority would need to return any CIL receipts.

Question 14 Are there any particular factors the Government should take into account in allowing abatement for phased planning permissions secured before introduction of CIL?

There should be a time limit restricting the length of the abatement/adjustment period e.g. within 2-3 years of commencement.

Question 15 Do you agree that Government should amend regulations on how indexation applies to development that is both originally permitted and then amended while CIL is in force to align with the approach taken in the recently amended CIL regulations?

ADEPT agrees.

Question 16 Do you agree with the Government's proposal to allow local authorities to set differential CIL rates based on the existing use of land?

ADEPTS supports this proposal in principle although, in practice this could be complex and impractical for the following reasons:

- Establishing existing uses on a case by case basis could be complex and time consuming prolonging the development process. There would need to be a standardised assessment approach to avoid lengthy developer disputes regarding the existing use(s) and rates applicable.
- Market responsive differential use rates would need a lot of evidence and authorities would end up with complex charging schedules with many different rates that could prove difficult to administer.
- Engagement with developers may prove difficult as they may not want to openly discuss existing use values of their land.
- It may be simpler to continue to rely on the existing ability to set rates based on geographical areas e.g. could have differential rates for greenfield and brownfield land.
- If this proposal is aimed at improving market responsiveness then it is suggested that this could be addressed enabling a speedier CIL Charging Schedule review process.

Question 17 If implementing this proposal do you agree that the Government should:

i. encourage authorities to set a single CIL rate for strategic sites?

It is difficult to see how this would work in practice.

ii. for sites with multiple existing uses, set out that CIL liabilities should be calculated on the basis of the majority existing use for small sites?

It is difficult to see how this would work in practice.

iii. set out that, for other sites, CIL liabilities should be calculated on the basis of the majority existing use where 80% or more of the site is in a single existing use?

It is difficult to see how this would work in practice.

- iv. **what comments, if any, do you have on using a threshold of 80% or more of a site being in a single existing use, to determine where CIL liabilities should be calculated on the basis of the majority existing use?**

It is difficult to see how this would work in practice.

Question 18 What further comments, if any, do you have on how CIL should operate on sites with multiple existing uses, including the avoidance of gaming?

ADEPT has no further comments.

Question 19 Do you have a preference between CIL rates for residential development being indexed to either: a) The change in seasonally adjusted regional house price indexation on a monthly or quarterly basis; or b) The change in local authority-level house price indexation on an annual basis

A change in the indexation on any basis shorter than annually would result in uncertainty for developers and unnecessary administration for local authorities; and it is considered preferable and more appropriate to index to the change in local authority level HPI as opposed to regional index figures.

Question 20 Do you agree with the Government's proposal to index CIL to a different metric for non-residential development?

ADEPT agrees with the proposal. If residential development is linked to the regional house price index, this would not be appropriate or relevant for non-residential development.

Question 21 If yes, do you believe that indexation for non-residential development should be based on:

- i. **the Consumer Prices Index?**

ADEPT considers this would not be appropriate.

- ii. **a combined proportion of the House Price Index and Consumer Prices Index?**

ADEPT consider this would be a better approach although there would need to be better clarity and ease of use in respect of linking to any such indexation data source.

Question 22 What alternative regularly updated, robust, nationally applied and publicly available data could be used to index CIL for non-residential development?

The All in Tender Price Index (TPI) is readily available to authorities subscribing to BCIS, this may not be appropriate to use if HPI is used for residential. TPI is based on the cost of providing infrastructure as opposed to its value i.e. there would be different logic applied to the indexation applied for residential and non-residential uses.

Question 23 Do you have any further comments on how the way in which CIL is indexed can be made more market responsive?

ADEPT has no further comment to make.

Question 24 Do you agree with the Government's proposal to:

- i. **remove the restrictions in regulation 123, and regulation 123 lists?**

ADEPT supports this proposal. ADEPT considers that guidance should require local authorities to set out in supplementary planning guidance what infrastructure would be sought through S106 and what would be CIL funded to avoid 'double dipping' and provide clarity for all concerned.

- ii. **introduce a requirement for local authorities to provide an annual Infrastructure Funding Statement?**

ADEPT agrees with this proposal.

Question 25 What details should the Government require or encourage Infrastructure Funding Statements to include?

Infrastructure Funding Statements should be produced annually after publication of the CIL Annual Financial Report and confirmation of year-end S106 finances. The Infrastructure Funding Statement should set out the infrastructure priorities and planned delivery for the next 5 years in line with the Local Authority's Capital Programme,¹¹ and set out how developer contributions from CIL and S106 will contribute to this. It should be aligned with the Infrastructure Delivery Plan of an authority and should be capable of being easily amended to

respond to changing requirements. A major issue with CIL its complexity. This needs to be addressed to improve clarity and confidence. It would also increase certainty for investment.

Question 26 What views do you have on whether local planning authorities may need to seek a sum as part of section 106 planning obligations for monitoring planning obligations? Any views on potential impacts would also be welcomed.

The draft PPG does not allow a local planning authority (whether that is an upper or lower tier authority) to seek any S106 monitoring contributions, even for particularly complex planning obligations. Therefore, the suggestion in this consultation that local planning authorities will be able to seek S106 monitoring contributions is welcomed as monitoring complex planning obligations is costly and time consuming. Planning obligations may only constitute a reason for granting planning permission if they meet the tests referred to above that they are necessary to make the development acceptable in planning terms, directly related to the development, and fairly and reasonably related in scale and kind. If they were not necessary Local Authorities would not have the expenditure of preparing and monitoring them which falls on the public sector. It seems reasonable to be able to require a charge for monitoring them.

Question 27 Do you agree that combined authorities and joint committees with strategic planning powers should be given the ability to charge a SIT?

ADEPT agrees with this proposal although the terms upon which authorities can currently seek SIT are very restrictive. There should be much more flexibility in who can collect and administer SIT.

However, the SIT should be complementary to CIL. ADEPT would not wish to see the introduction of SIT prejudicing an individual Local Authority's CIL rates (i.e. undermining them in terms of viability).

Consideration should be given to other suitable options, such as a S.101 joint committee which are widely used within local government. Some flexibility around governance should be allowed especially where local authorities are preparing a statutory joint plan.

An alternative approach to SIT may be, if the pooling restriction were to be lifted without restriction, to have a voluntary agreement to secure and pool funding from S106 agreements for a strategic infrastructure fund.

Question 28 Do you agree with the proposed definition of strategic infrastructure?

ADEPT agrees broadly, subject to the response to question 29 below.

Question 29 Do you have any further comments on the definition of strategic infrastructure?

ADEPT considers 'strategic infrastructure' is satisfactorily defined in the first sentence of paragraph 151.

Question 30 Do you agree that a proportion of funding raised through SIT could be used to fund local infrastructure priorities that mitigate the impacts of strategic infrastructure?

Yes.

Question 31 If so, what proportion of the funding raised through SIT do you think should be spent on local infrastructure priorities?

That would depend on local circumstances.

Question 32 Do you agree that the SIT should be collected by local authorities on behalf of the SIT charging authority?

ADEPT agrees, although there should be greater flexibility in the introduction, administration and collection of SIT.

Question 33 Do you agree that the local authority should be able to keep up to 4% of the SIT receipts to cover the administrative costs of collecting the SIT?

ADEPT agrees that the administrative costs of authorities (upper and lower tier) should be covered.

Question 34 Do you have any comments on the other technical clarifications to CIL?

ADEPT recommends that the revised CIL regulations should provide clarity as to whether or not a commencement notice is required for a residential extension that is exempt. Regulation 42B(6) contradicts other guidance on the matter (including the www.GOV.uk guidance that states that Regulation 42B sets out that a commencement notice is not required for extensions).

¹ RTPI Policy Paper, *Transport Infrastructure Investment: Capturing the Wider Benefits of Investment in Transport Infrastructure*, (January, 2014): http://www.rtpi.org.uk/media/816110/capturing_the_wider_benefits.pdf

² D. Adams, M. O'Sullivan, A. Inch, M. Tait, C. Watkins, and M. Harris, *Delivering the Value of Planning*, RTPI Research Report no. 15 (August, 2016), p. 1.

³ <https://www.adeptnet.org.uk/sites/default/files/documents/Industrial%20Strategy%20response.pdf>

⁴ RSA Inclusive Growth Commission (2017), *Making our Economy Work for Everyone*, London: RSA, p. 26.

⁵ https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/491163/future-of-cities-land-value-capture.pdf

⁶ <http://www.rtpi.org.uk/briefing-room/news-releases/2017/february/new-rtpi-research-into-how-to-fund-infrastructure-by-capturing-rising-land-value-announced-today/>

⁷ D. Adams, M. O'Sullivan, A. Inch, M. Tait, C. Watkins, and M. Harris, *Delivering the Value of Planning*, RTPI Research Report no. 15 (August, 2016), p. 3.

⁸ http://www.adeptnet.org.uk/documents?field_document_cat_tid=44

⁹ <http://www.rtpi.org.uk/media/2619006/Local-authority-direct-provision-of-housing.pdf>

¹⁰ Subject to their not being extensive in scale and size (over and above would be considered a reasonable domestic extension).

¹¹ In two tier areas it should reflect the capital programmes of both sets of authorities.