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COUNTY COUNCILS NETWORK

Consultation Response

Technical Consultation on the Infrastructure Levy

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Summary

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Technical Consultation on the Infrastructure Levy

- CCN welcomes the opportunity to respond to this important consultation and supports the government's ambitions to streamline the planning process, speed-up delivery and better fund both affordable housing and critical infrastructure. While CCN has long argued that reform is desperately needed to the developer contributions system, we have significant substantial concerns about the introduction of the proposed infrastructure levy and do not believe that it will deliver the stated outcomes for the following reasons:

  - There is strong view that the proposed levy will fail to raise enough resources to properly fund both affordable housing and strategic infrastructure. Moving to one single levy to cover both affordable housing and strategic infrastructure could cause a trade-off between the two, leading to either reduced affordable housing contributions or – more likely - reduced strategic infrastructure delivery.

  - The key to the success of any proposed reforms must be to address the lack of a statutory role for county councils in the current developer contributions system. However, the proposed levy will do nothing to change this, and our members in two-tier areas are strongly of the view that the proposed levy will make the existing situation much worse.

  - Alongside the lack of statutory role for county councils, CCN are very concerned that while a proportion of the levy would be directed towards Parish and Town Councils, there will be no dedicated share for upper-tier councils despite being responsible for the delivery strategic infrastructure within two-tier areas.

  - Some authorities, particularly those in areas of lower land values, have chosen not to adopt the Community Infrastructure Levy for fear of deterring development. Being a mandatory charge, the levy may risk development becoming unviable in some areas. Almost all authorities CCN has engaged have said that borrowing against the levy to forward fund infrastructure will carry too much risk, and this would not be something they would pursue.

  - The resources, skills and time that it will take for the levy to be implemented will be considerable, and local planning authorities will require considerable support. CCN do not believe that the proposed planning fee increase would go far enough to bridge existing funding gaps, and a much more extensive programme of support would be required if the infrastructure was to be implemented.

- Overall, our members believe that the infrastructure levy, as currently proposed, will make the current system of developer contributions things worse rather than better. This is particularly the case in two-tier local authority areas. **CCN is therefore, reluctantly, calling on the Government to reconsider introducing the new levy.**

- Instead, the government should be focus on reforming the existing system. Our submission sets out a number of practical steps that could be taken to reform the existing system and improving the delivery and funding of infrastructure.

Response

Technical Consultation on the Infrastructure Levy

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Introduction

1. The County Councils Network (CCN) represents 37 English local authorities that serve counties. The 20 county councils and 17 unitary authorities that make up CCN are the largest part of the local government family. They represent all four corners of England, from Cumbria to Cornwall, Durham to Kent, North Yorkshire to Suffolk, Derbyshire to Essex.

2. The essential services our members provide touch on the everyday lives of residents and businesses across 86% of England's landmass and 46% of its population. The areas represented by our members constitute 38% of local government expenditure; 44% of total public expenditure (£201bn); and generate just under half of all tax revenues (£255bn). The economies of our areas contribute 38% of Gross Value Added (GVA) and 44% of employment.

3. In considering CCN's response to this consultation, it is important to recognise that CCN members bear differing planning responsibilities under existing planning regulations.

4. County councils, which cover 34% of England's population, lead on the provision of infrastructure, transport, flood risk, local nature recovery and climate change, and on economic development that supports housing and other developments in district local plans. CCN's 17 unitary member councils, which cover 12% of England's population, are also responsible for all these statutory functions, alongside being both housing and planning authorities.

5. In considering the views of our unitary member councils in relation to this consultation, it is important to bear in mind that they are a very unique set of planning authorities.

6. Firstly, these authorities are significantly larger than the average English unitary authority, with an average population of 380,000 people – double the size of a typical unitary. They also have an average landmass of 252k hectares - 14 times the size of non-CCN unitary authorities.

7. Secondly, it is important to recognise that eight of CCN's 17 unitary authorities were created as a result of very recent local government reorganisations since 2019. These authorities inherited multiple developer contribution regimes from predecessor district authorities, which will have a bearing on their views on the implementation of the proposed infrastructure levy. This response explores this issue in further detail.

Response overview

8. CCN welcomes the opportunity to respond to this important consultation. The delivery of high-quality infrastructure has never been more important – to encourage new development and economic growth, to support existing communities, and new communities when growth

happens. High quality infrastructure is also vital to supporting government ambitions of levelling up and reaching net zero.

9. Over recent years, CCN has undertaken considerable work on improving the planning system and delivery of infrastructure. This includes most recently a study with Pragmatix Advisory titled *Improving infrastructure funding and delivery*.[1] This report, alongside our work on strategic planning[2], should be read alongside this response. This response explores some of the findings later in this submission.

10. CCN has also engaged extensively with our member councils on planning and infrastructure reforms. Specifically, CCN held two roundtables with county councils and unitary member councils in May 2023 to explore their views on the proposed levy and feed into this consultation response. These roundtables were held separately for each respective type of council, recognising the structural differences and responsibilities of county and unitary authorities outlined at the beginning of this response. The sessions were also attended by officials from the Department of Levelling Up, Housing and Communities who introduced the Levy and were able to listen to feedback and answer any questions.

11. Building on engagement and our previous advocacy, CCN welcomes the government's ambitions to streamline the planning process and speed-up delivery. CCN agrees with the sentiment that local leaders need "the right tools to bring forward more affordable housing, transport links, schools and GP surgeries their communities need".

12. Reform to developer contributions system is therefore desperately needed. CCN has previously surveyed members for their views on infrastructure funding and delivery, with many members believing that infrastructure delivery does not keep pace with housing delivery. Our survey showed that 73% describe the 'infrastructure funding gap' in their areas as 'severe' with a further 27% saying that it was 'moderate'. Our members individually face infrastructure funding gaps of millions of pounds, and whilst they do their best to often bridge the gap, they are increasingly unable to do this in the face of increasing cost pressures on their statutory services.

13. New housing brings additional pressure on key local services, from roads to doctors' surgeries and schools to social and children's care. It is often this additional pressure on local services that leads to local objection to new development. Any proposed reforms must seek to address this, not make the situation worse than it currently is.

14. **We have substantial concerns about the introduction of the proposed infrastructure levy and do not believe that it will deliver the outcomes stated by government**. It is clear from our engagement with member councils that the majority – whether in a two-tier area or unitary authority – have significant concerns about the impact that the proposed levy could have on the delivery of infrastructure in their areas. The below sections explore these concerns in more detail from both a county council and unitary council perspective.

15. **Overall, our members believe the infrastructure levy, as currently proposed, will make the system of developer contributions worse rather than better. This is**

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[1] Pragmatix Advisory. *Improving Infrastructure Funding and Delivery* (2023) http://www.countycouncilsnetwork.org.uk/download/4774/?tmstv=1686053213
[2] CCN. *The Future of Strategic Planning in England* (2021) http://www.countycouncilsnetwork.org.uk/download/4003/?tmstv=1686053213

particularly the case in two-tier local authority areas. CCN is therefore, reluctantly calling on the Government to reconsider introducing the new levy.

16. When asked whether members would prefer the introduction of a new levy, versus reform of the existing system, the majority voted in favour for reform of the existing system believing that this could deliver better outcomes. Below, we outline some suggested reforms to improving the current system instead of introducing the infrastructure levy.

17. Our members want the planning system to be efficient, to deliver the best possible outcomes for communities and contribute to economic growth and prosperity of areas. Central to this is infrastructure delivery, and local government is reliant on the developer contributions system to deliver the infrastructure needed to encourage and support development and communities. They want reform to be a success and are willing to work with the government to make it as much as a success as possible.

18. Whatever the Government decides, we hope that they will listen to the concerns raised and engage and work with the sector to progress reforms to the developer contributions system that are as effective as they can be so it delivers the infrastructure and housing that will contribute to fair growth across the country and serve many generations to come.

Main concerns about a new infrastructure levy

19. As outlined above, the majority of our members have significant concerns over the introduction of a new infrastructure levy which have led to CCN opposing its introduction.

20. There are several shared overarching concerns across our entire membership, including;

- There is a strong view that the proposed infrastructure levy will fail to raise enough resources to properly fund both affordable housing and strategic infrastructure. Moving to one single levy to cover both affordable housing and strategic infrastructure could cause a trade-off between the two, leading to either reduced affordable housing contributions or – more likely - reduced strategic infrastructure delivery. There is also widespread concern that the Levy will not allow councils to take an infrastructure first approach to development, which is likely to cause concern from residents and increase objections to new housing developments.

- Some authorities, particularly those in areas of lower land values, have chosen not to adopt the Community Infrastructure Levy for fear of deterring development. Being a mandatory charge, the IL may risk development becoming unviable in some areas. The sometimes low level of contributions received could also make it difficult to provide infrastructure, which runs contrary to levelling-up ambitions and risks sustainable development.

- CCN areas are predominantly rural. Often, they see lower levels of development compared to their urban counterparts, but the need for strategic infrastructure investment is just as great. Lower levels of development means that less can be collected through developer contributions, causing issues for funding major strategic infrastructure. The Government’s Housing Infrastructure Fund has helped to bridge the gap for some member authorities, but this fund is not finite and is subject to competitive bidding.

21. Alongside these shared concerns, there issues arising from the perspective of our unitary members that differ from our county council members. We detail these different perspectives in this section.

Unitary member concerns

22. CCN unitary authorities have the benefit of being single tier authorities meaning that they have more autonomy over the expenditure and use of developer contributions. Their unique scale, as outlined in the introduction, also means that they can pool contributions more effectively, meaning that the contributions they collect can be spent more meaningfully on larger projects that benefit a wider area when compared to spending it within just one district.

23. A key concern for our unitary members is the resources that their planning departments will need to prepare for and implement the levy. Planning authorities will need a considerable injection of financial resources as well as training if they are expected to implement a new Levy.

24. The resources, skills and time that it will take for the Levy to be implemented will be considerable, and local planning authorities will require considerable support. We recognise that the government has recently consulted on improving planning performance through increasing fees, but as we set out in our consultation response, we do not believe that the fee increased proposed would go far enough to bridge existing funding gaps, and a much more extensive programme of support would be required if the infrastructure was to be implemented.

25. Almost all authorities CCN has engaged have said that borrowing against the levy to forward fund infrastructure will carry too much risk, and this would not be something they would pursue.

26. With our unitary members likely to be grappling with a new Levy whilst they prepare new local plans under a new system, there is also concern that a new Levy will cause additional uncertainty in the system. This is likely to cause further delays in the system at a time when the delivery of more affordable housing and infrastructure is more important than ever.

27. Whilst a handful of CCN's more recently formed unitary members have expressed the view that the Levy would give them a mandate to streamline and consolidate the range of CIL charging schedules that they have inherited from the numerous district councils they have replaced, this is also something that could be done within the current system.

Two-tier member concerns

28. As highways, transport and education authorities, county councils are key deliverers and enablers of infrastructure in their areas. However, they have no statutory rights within the existing system of developer contributions, and as set out at Annex 1, and are often not party to rate setting, or negotiation.

29. Whilst Section 106 does provide some certainty over receipts for counties, these are largely being scrapped and they have no certainty over the funding they will receive through CIL, despite being major infrastructure providers. Often, they are required to prepare lengthy bids to submit to the district councils in their area. Each district may have different protocols that the county must observe, again causing delays and adding red tape to the process.

30. The key to the success of any proposed reforms must be to address this tension in the current system and provide county councils with a statutory role. However, the proposed levy will do nothing to change this, and our members in two-tier areas fear are strongly of the view that the proposed levy will make the existing situation much worse. It has been

outlined that county councils will be 'statutory consultees' in the preparation of Infrastructure Delivery Strategies, but we do not think this goes far enough to secure their involvement.

31. Alongside the lack of statutory role for county councils, CCN are very concerned that while a proportion of the Levy would be directed towards Parish and Town Councils, there will be no dedicated share for upper-tier councils despite being responsible for the delivery strategic infrastructure within two-tier areas. While CCN support the proposition that Parish and Town Councils receive some portion of the funds received via developer contributions, this must be coupled with a dedicated share for county councils. Furthermore, share for Parish and Town Councils must be the right percentage so that funding isn't directed away from delivering strategic level infrastructure.

32. A key concern is the levy bringing together the expectation that both affordable housing and strategic infrastructure will be delivered via the new levy. CCN members recognise how important it is that we deliver affordable housing across the country, and we know that we are currently not delivering enough.

33. With the levy promising to deliver at least the same of affordable housing, and potentially more, we believe that this could lead to a situation where the residual funding for other supporting and strategic infrastructure will be reduced, and potentially more than the existing system. This is particularly the case when considering the new 'Right to Require', which the consultation document states will 'see a percentage of the Levy value delivered in-kind by developers as on-site affordable housing, protecting it from the pressure of other spending priorities'.

34. If this is the case, county councils would like to see details of additional funding that would be available to them, such as the use of the Basic Need formula from the Department of Education, to help them bridge the increasing funding gap that they are likely to see. As county councils have the statutory duty to ensure sufficient school places, they carry the risk if funding through the levy, or from wider Government funds, is not available.

35. It is also noted that county councils will not have powers to borrow against the levy, despite being larger authorities who may have the capability to do so. This will make forward funding for infrastructure exceptionally difficult when it is often these authorities who are required to provide infrastructure such as roads and transport that make development work.

Improving infrastructure funding and delivery

36. Earlier this year, CCN published a report with Pragmatix Advisory titled *Improving infrastructure funding and delivery*. The report provides a detailed overview of how the current system of infrastructure financing works, and highlights some of the challenges and opportunities that this presents considering the proposed reforms.

37. The report finds that an overhaul of the way that infrastructure is financed and delivered is desperately needed to overcome barriers to success in areas which have poor infrastructure and to cater for new developments and changes in society.

38. Analysis shows that funding from developer contributions varies greatly. Lower sums are often raised from new developments in the north and midlands and especially in areas with lower existing levels of housing growth. In many parts of the country, the Community Infrastructure Levy is either not implemented, or is never applied to the same development

as Section 106. It can be slow to build up and put to use. In some two-tier areas, county councils find it difficult to access the levy and it can be heavily skewed towards community facilities, while Section 106 is focused on affordable housing, leaving little for county-level infrastructure.

39. The report argues that infrastructure should be seen as an investment, not just for developers and landowners, but also for public money. To unlock developments and stimulate growth, this investment needs to be stable, predictable and long-term. To make reform work, and to deliver the long-term investment required, the report outlines that a shared long-term vision is needed at a strategic level for each county area, and that changes to the developer contributions regime will only succeed if they are grounded in this. The report identifies a package of measures to achieve this, which includes:

    - Local authorities, developers, infrastructure providers and communities should work together to develop a fully costed strategic vision for their areas, mapping out housing growth and infrastructure needs. This would form the basis of charging developer contributions.

    - The government should reintroduce formal strategic planning back into the planning system, which would provide the most suitable mechanism for developing a strategic vision for each county area.

    - Partnerships of upper-tier and lower-tier authorities should be empowered to determine the most appropriate basis for charging a levy in their area, within a framework drawn up through dialogue between the government, developers and local government.

    - Capital grants should be long term and not subject to competition. Rolling five-year infrastructure budgets should be devolved to county level, to be managed by each area in support of its strategic vision, drawing on existing best practice.

40. These principles could be applied to the reform of the existing system of developer contributions, rather than a new levy, and we go to outline some further solutions in the next section.

Solutions

41. As we have outlined, CCN members have significant concerns about the implementation of a new levy that would replace the existing systems of Section 106 and the Community Infrastructure Levy. Instead, our members want to work with the government on a programme of reform to the existing system. This may take some principles of the proposed infrastructure levy but would ultimately see the retention of CIL and Section 106 working in tandem to deliver the affordable housing and infrastructure that communities need.

42. The existing system is not without its challenges, as we outline in further detail in Annex 1. In terms of changes that would make the biggest difference to the current system of CIL, CCN would call for the following:

    - Encourage all planning authorities to have CIL in place, recognising that in some areas it may not be appropriate, and retain funding through Section 106. This would allow rates to be set for certain types of land uses, providing more certainty over levels of income in accordance with plans for growth with site-specific negotiations, including affordable housing, through Section 106.

- Work with the wider development sector on viability issues within the existing system and introduce new legislation around the use and content of viability assessments.

- Introduce a statutory duty for planning authorities to engage with county councils when undertaking exercises to set rates, and over what land uses should raise a levy.

- Mandate for county councils to receive a certain percentage of the receipts received through CIL so that they are guaranteed a certain level of funding.

43. There may also be a case to review the recommendations of the CIL review that was undertaken in 2017. These suggested that authorities should set a local infrastructure tariff, and Section 106. It also recommended that combined authorities be given powers to set a 'strategic infrastructure tariff' that would allow them to set rates to fund strategic infrastructure in their areas. CCN believe that these powers should also be given to county councils.

44. Councils in two-tier areas have increasingly embarked on non-statutory joint working to bridge the gap between tiers and ensure that growth is managed as strategically as possible, and that developer contributions are spent in a way that brings the best value for money. For example, the Greater Norwich Growth Board brings together four of the local planning authorities in Norfolk, Norfolk County Council and the New Anglia LEP. All of the CIL collected by the four planning authorities is collected through a single funding pot to be spent on an agreed programme administered by the board, with the county council acting as the 'banker'.

45. There are a number of examples like the one above, however, we believe a more mandated approach would result in consistency of practice across the country to ensure that councils are working together as proactively as possible. Any system of developing contributions – whether the existing, or proposed Infrastructure Levy - must ensure that both tiers of local government are able to secure adequate contributions for infrastructure.

46. Over the years, CCN has undertaken considerable work on improving the planning system and delivery of infrastructure. Key to this, we believe, is a return to strategic planning, which would help areas to identify strategic infrastructure needs across larger geographies. This would provide parity with mayoral combined authorities and would help to encourage growth across the country.

47. As part of our response to the Planning for the Future White Paper, we submitted a proposal to replace the Duty to Cooperate, that we believe would lead to better planning for growth and therefore better outcomes. Our proposals for Strategic Planning Advisory Bodies would bring together all council leaders and other strategic partners such as Local Enterprise Partnerships and health, education and environment partners, who would perform a 'ringmaster' role for setting out a long-term vision for the area: joining up economic, infrastructure health, and environmental aims with housing.

48. This would not only have the benefit of agreeing a vision and strategic growth priorities, but could also provide a forum to set developer contribution rates and agree how infrastructure funding is spent. It could also provide the mechanism to pool contributions to fund strategic

infrastructure if there is a desire or need to do so, much like the Greater Norwich Growth Board example outlined above.

49. The Government's proposed 'Joint Spatial Development Strategies' in the Levelling up and Regeneration Bill could provide a similar platform for these sort of discussions to take place, particularly in two-tier areas, and we have previously called for county councils to be consulted in the preparation of these strategies where they come forward. We would urge the Government to bring forward a minor amendment that would enable this, and which would make these plans a much more powerful tool than they otherwise might be.

Conclusions

50. For reasons outlined above, the majority of CCN's members have significant concerns about the implementation of the proposed Infrastructure Levy, believing that could lead to worse outcomes when compared to the existing system. We are therefore calling on the government to work with the wider development sector to reform the existing system rather than introduce a new one.

51. We believe are concerned that the proposed levy will not enable councils to meet both the level of affordable housing they need *and* the supporting infrastructure required to support communities. This could lead to significant pressure on existing services at an unsustainable level, causing further local resentment to development and running contrary to levelling up and spreading economic growth.

52. Many of our members have prepared comprehensive responses to the consultation, and we encourage the department to read this consultation response in conjunction with the individual responses from our member councils.

53. If the Government is to take forward the Infrastructure Levy, we would urge that much more engagement is undertaken with the sector. We have previously welcomed the 'test and learn' approach that has been suggested and would urge county councils to be a key part of this in the areas where the approach is taken forward.

Annex 1 - Issues with existing system

54. There are several issues that CCN has identified with the way the developer contributions system works. A key issue for CCN members is the level of funding from developer contributions that makes their way through to them, and in turn the significant infrastructure funding gaps they face.

55. We are cognisant of the fact that the developer contributions system was not designed to be a panacea for infrastructure funding but believe that better methods of land value capture and guidance around viability would assist in collecting higher contributions than the current system, and would thus enable a better distribution of funding between lower and upper tier authorities.

Community Infrastructure Levy

56. In terms of specific issues around the Community Infrastructure Levy (CIL), we have worked with members over the years and have identified the following issues as the main concerns:

Rate setting

57. Local planning authorities, who are district councils in two-tier areas, are responsible for setting charging schedules with rates according to different types of development. Whilst the Planning Practice Guidance recognises that effective cooperation can help to inform the Community Infrastructure Levy and form part of the evidence base for Infrastructure Funding Statements, the cooperation on the ground often doesn't go far enough.

58. We have heard from members that often, district and borough councils engage with the county when CIL first came in to help identify infrastructure requirements to establish a funding gap. However, they were not then engaged in any of the viability work to establish the actual rates charged, nor about what land uses would bear a charge.

59. Whilst it is clearly important for rates set to strike the right balance that encourages development to come forward whilst bringing in an optimum level of funding for infrastructure, this means from the outset counties are on a backfoot. Despite their significant role in infrastructure delivery and service provision, the lack of involvement means that they are unable to be guaranteed a level of funding through the CIL system, due to them being removed from the rate-setting process.

Sporadic take-up across the country

60. Although introduced in 2011, it is estimated that around a third of local planning authorities in England and Wales do not have a CIL charging schedule in place. This sporadic take-up leaves authorities in these areas reliant on Section 106 to fund infrastructure. Although the restrictions that were once in place that prevented pooling contributions from more than five developments have been removed, this reliance on S106 can cause issues in terms of negotiating and re-negotiating agreements.

61. CIL is non-negotiable, and notwithstanding the issues above, provides a level of certainty over what an authority can expect to receive. Section 106 agreements often get tied up in viability negotiations which can lead to long periods of negotiating down contributions. As affordable housing is currently delivered through Section 106, much of the land value uplift

is often given over to the provision of affordable housing, leaving very little for any other infrastructure.

The distribution of funding

62. As the responsibility for rate setting falls on planning authorities, so does the collection of funding through CIL. Although county councils have much greater responsibility for infrastructure delivery, they have no role in the allocation of receipts. Many of our members have reported that they receive limited amounts of CIL despite pressing local and strategic infrastructure needs across the county as each borough and district sets their own funding priorities.

63. In many cases, county council officers spend much of their time bidding to district councils for funding that they have collected through CIL – with each district having a difference bidding process to navigate. Oftentimes, county councils do not have a guarantee of receiving any funding through these bidding processes, even though they have identified infrastructure priorities that are vital to supporting growth.

64. This can be a poisoned chalice – with communities accepting growth, without the delivery of necessary infrastructure to make growth sustainable. With school places becoming more difficult to find, GP surgeries and health centres having limited capacity and roads becoming congested, this can lead to communities becoming reticent to accept development in the future.