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Response to Consultation: Planning for the Future – White Paper August 2020

Date: 20th October 2020

This response is submitted on behalf of Anthony Collins Solicitors LLP ("ACS") by Stuart Evans, Legal Director.

We act on behalf of many Registered Providers of Social Housing across England (and Wales). Many clients will respond to the consultation direct. This paper is a collation of responses at meetings we have attended with our clients. Where views are expressed these are our own.

Pillar Three – Planning for infrastructure and connected places

Proposal 19: The Community Infrastructure Levy should be reformed to be charged as a fixed proportion of the development value above a threshold, with a mandatory nationally-set rate or rates and the current system of planning obligations abolished.

Questions

22(a). Should the Government replace the Community Infrastructure Levy and Section 106 planning obligations with a new consolidated Infrastructure Levy, which is charged as a fixed proportion of development value above a set threshold?
[Yes / No / Not sure. Please provide supporting statement.]

We are **Not Sure**.

We see the potential benefits of the proposal; for example, in assisting small and cash poor builders who will only have to pay the Levy once sale proceeds are received as opposed to when development is commenced. It also brings more certainty to developers in being able to calculate how much they will pay. Our clients agree that s106s can be complicated, difficult to follow and applied differently within the various Local Authorities where they work, which causes confusion. A simpler, uniform approach does therefore seem like a good step forward.

However, there are risks and concerns. With a Levy set at the final value of the development, the issue is that the South (with much higher land values) will therefore collect much more Levy than the North (including the Midlands); contrary to Government agenda of "levelling up". The Levy should be enacted in a way that will help redistribute development away from the South to the North. Whilst we appreciate land values are lower in some areas, we anticipate that construction costs do not have such wide variations, though ONS data to confirm this is currently unavailable. We are concerned this could be "levelling down" if not managed correctly. Our clients share our concerns that these proposals could lead to less new affordable housing in the areas where there remains housing need.

We need to see more detail on what the Levy rates would be, how they would be set and how the proceeds would be collected and managed before we can definitively answer this question, but we raise the concerns above.

22(b). Should the Infrastructure Levy rates be set nationally at a single rate, set nationally at an area-specific rate, or set locally?
[Nationally at a single rate / Nationally at an area-specific rate / Locally]

Locally

If set nationally at an area-specific rate; there is no mention in the White Paper of how large these areas would be and who would set the area-specific rates; would this still be done by Central Government?

Our concern is that the current benefit of CIL is lost; Local Authorities are currently free to set CIL themselves and at different levels within their boroughs to encourage levels of development in certain areas. They can also encourage types of development; by setting different rates for commercial or residential development. If a flat rate is set nationally; this benefit would be lost. We also have concerns that the current benefits of s106s could be lost, in that the opportunity for local planning authorities to charge local-based contributions for development could be lost.

We feel that the Levy should be set at a local level; this would hopefully see housing and affordable housing delivered in the areas where it's most needed and not just where it's most profitable for the developers. Our clients agree that setting at a national level does not work; regional and sub-regional differences in the market must be taken into account. Until it is known what the levels will be in the areas concerned; it is difficult to say whether the Levy would be a success or not in the delivery of new, affordable homes.

For clarity, we do not support the alternative options mentioned at the end of Proposal 19.

> Firstly, with the proposed repeal of s106, if it was optional for Local Authorities to set the new Levy, and one chose not to set it, we would have concerns that this could have a significant negative impact on the provision of affordable housing in that area. We believe it should be a national obligation for Local Authorities to adopt the Levy, if it is introduced, but believe it's crucial that the rates are set locally.
> Secondly, we do not think it is a good idea to have de minimis thresholds; as these do not take into account the amount spent by the developers in developing that land (only the final value) and so the cost of the Levy could conceivably discourage development in those areas.

22(c). Should the Infrastructure Levy aim to capture the same amount of value overall, or more value, to support greater investment in infrastructure, affordable housing and local communities?
[Same amount overall / More value / Less value / Not sure.
Please provide supporting statement.]

More value

We and our clients want to see an increase in provision for affordable housing and feel the need for affordable housing will only grow in the near future, given the economic times we are living through.

We and our clients are concerned that a repeal of s106 will lead to less affordable housing. Though we appreciate different Local Authorities have different preferences for how to spend Levy proceeds in their areas (for example on infrastructure and local communities), we do not want to see a reduction in affordable housing provision.

A poll of our attendees at a Webinar held to discuss this White Paper found that 74% thought that a consolidated Infrastructure Levy as proposed in this Paper would lead to less affordable housing. 26% thought it would lead to the same. 0 thought it would lead to more. This demonstrates the concerns our clients have for the proposal's' impact on affordable housing. It must be at the heart of what the Levy proposes to accomplish.

Proposal 21: The reformed Infrastructure Levy should deliver affordable housing provision

Questions

24(a). Do you agree that we should aim to secure at least the same amount of affordable housing under the Infrastructure Levy, and as much on-site affordable provision, as at present?
[Yes / No / Not sure. Please provide supporting statement.]

Yes; this is absolutely crucial.

Any reduction in affordable housing would be a step backwards as we and our clients see it. So too would a reduction in on-site affordable provision; we do not want to see a return to affordable housing being separated from market housing and in poor locations of poor quality.

We have discussed the difficulties in ensuring affordable housing provision under your proposals; the number of affordable units may not be guaranteed as if there is a market downturn at the point of sale, the Levy may be reduced, leaving not enough cash to buy the units. The Paper discusses a risk sharing agreement whereby the Local Authority can reduce the number of units it has signed up to; but this makes it very hard for Registered Providers to plan commercially.

24(b). Should affordable housing be secured as in-kind payment towards the Infrastructure Levy, or as a 'right to purchase' at discounted rates for local authorities?
[Yes / No / Not sure. Please provide supporting statement.]

We are **Not Sure**.

Land as in-kind brings risk as well as flexibility for Local Authorities. For a right to purchase at discount rates: when, how and by whom would discount rates be calculated? Would the Local Authority need to obtain a valuation? What if the Registered Provider's valuation doesn't concur?

If a discount is set, will competition on price between Registered Providers no longer exist? There is not enough clarity in the White Paper on how the number of units would be calculated or when and how long for the option would apply.

24(c). If an in-kind delivery approach is taken, should we mitigate against local authority overpayment risk?
[Yes / No / Not sure. Please provide supporting statement.]

Yes, as discussed above, market downturns could lead to an overpayment risk.

A risk sharing agreement between the Local Authorities and the developer though does raise questions; where does it leave Registered Providers? It's very hard for them to plan commercially if the Local Authority can later reduce the number of units it has signed up to. What also if the land has already been transferred at golden brick level? More consideration is needed to these factors.

24(d). If an in-kind delivery approach is taken, are there additional steps that would need to be taken to support affordable housing quality?
[Yes / No / Not sure. Please provide supporting statement.]

Not Sure

We agree with the option for Local Authorities to revert back to a cash levy if no Registered Provider is willing to buy homes due to their poor quality; this incentive and sanction is needed to ensure high quality homes. We question whether a mere sanction of local authorities walking away from a development would be effective, given that the developer may be able realise a higher price on private market sales.
Ultimately, we need more information as mentioned in our response to 24)b) above before we can definitively answer this question.

Proposal 22: More freedom could be given to local authorities over how they spend the Infrastructure Levy

Questions
25. Should local authorities have fewer restrictions over how they spend the Infrastructure Levy?
[Yes / No / Not sure. Please provide supporting statement.]

Yes; but subject to ringfencing.

S106s, though not perfect, do guarantee a certain level of affordable housing on new residential development sites. Keeping affordable housing mixed in with market housing is essential. We have concerns that these new proposals could lead to a detriment of affordable housing on site; more information is needed.

We have concerns that if Local Authorities have fewer restrictions on how they spend the Levy; this could lead to affordable housing development in unsuitable areas and away from market development; causing effective social segregation. Our clients agree that we must not go back to the "old days" of having social or affordable homes away from market homes and of poorer quality. We also have concerns that if Local Authorities have complete freedom over how they spend the Levy, with no ringfencing for affordable housing mandated, then some may choose not to spend an adequate amount, or any at all, on affordable housing. Many Local Authorities face cash challenges and many, especially in the South, may have different priorities for what to spend money on, such as infrastructure or community projects, especially in the short to medium term. This could lead to a significant decrease in investment in affordable housing in those areas.

Ultimately, we do agree that Local Authorities should have fewer restrictions in how they spend the Levy; but think 25% of the Levy should always be ringfenced to be spent on <u>onsite</u> affordable housing provision as per the policies in the NPPF and the Local Plan.

25(a). If yes, should an affordable housing 'ring-fence' be developed?
[Yes / No / Not sure. Please provide supporting statement.]

Yes

Ringfencing would be crucial. If Central Government is to dictate how much Levy is ringfenced for affordable housing; this should vary across the country according to local needs, again with issues of “levelling up” in mind.

Affordable housing should be ringfenced for onsite delivery in market housing estates as per the position now linked to the NPPF and Local Plan policies and affordable housing need in that area.

Our clients agree some form of ringfencing is necessary. The need for affordable housing will only grow over the next few years given our economic reality; affordable rent, social rent, shared ownership etc will all be needed. To lose ringfencing would be a backward step.

A poll of attendees at our Webinar to discuss this White Paper found that 91% thought that affordable housing should be ring-fenced.