DCN BETTER LIVES STRONGER ECONOMIES
DISTRICT COUNCILS' NETWORK

Response to reforming developer contributions technical consultation on draft regulations

Overall, the DCN welcomes the proposed changes to legislation, particularly the lifting of the five-item S106 pooling restriction, and does not have any major objections.

The DCN agrees that the greater flexibility in regulation 3 (in particular the ending of the requirement to consult twice during the preparation of a CIL charging schedule) is useful, and does not foresee any problems with the draft legislation wording.

The DCN is satisfied that the scrapping of Regulation 123, which sets the pooling restriction and the inability to "double-dip" by using money from both CIL and S106 towards the same piece of infrastructure, is unlikely to cause any future problems. This change is strongly welcomed.

Any renewals of planning permission, including after any have lapsed, would need to be treated as a fresh application, irrespective of whether the original application was affected by the five-item pooling limit, and guidance in the PPG should make that clear.

The DCN believes that not introducing a grace period for applying for CIL exemption, and instead introducing a surcharge of the lower of 20% of the notional chargeable amount or £2,500, is sensible. No particular problems are envisaged with the wording of Regulation 7 in achieving this aim.

We do not see any elements in regulation 13, regulation 6 or regulation 5 that could prevent the Government achieving the policy intent and we believe these are likely to address the issues.

The DCN feel that no measure of indexation can ever be perfect, but that the proposed three-year smoothed average of local house prices is considered a sensible approach. However, it should be noted that some DCN members – particularly in northern areas of England – have concerns that the BCIS index has a tendency to be driven in significant part by the south-east England construction market, and so not representing other areas as accurately as would be ideal.

On a related matter, significant quantities of CIL are going to Parish and Town Councils (which have an adopted Neighbourhood Plan). Whilst LPAs have reserve powers to claw back CIL if unspent or improperly spent after 5 years, in the interim,

there does not seem to be any clear sanction against parishes who do not comply with the reporting requirements. It would be useful if the regulations could be changed to require that the neighbourhood element be withheld, if reporting is not up to date.

Removing Regulation 123 is very welcome news to DCN members; although the proposed infrastructure Funding Statements will be somewhat onerous to compile, at least in the first year, they should be simpler and quicker to update in future years.

In district/county areas it will be important that County Councils fully engage and work effectively with districts on this issue. The funding pressures that many county councils face means that on occasion the delivery of relevant infrastructure (such as highway and school improvements) can be difficult in a timely way that is necessary to implement Local Plan allocations, so any steps to improve the funding clarity would be supported.

As a minor point, in parts (1) (d) and (e) of draft regulation 121A, what is stated as “a three forecast statement…” should presumably be “three-**year** forecast statement…”

This proposed change set out in regulation 11 is very welcome, as it has caused various non-CIL DCN members significant problems over the years. That being said, the wording of proposed regulation 11 does raise concerns amongst DCN members, especially those which do not have a CIL charging schedule (and who are, in effect, often having to subsidise monitoring of planning obligations from their own budget). It is proposed that the costs of monitoring the planning obligation(s) for an individual development could be sought, providing that it “*fairly and reasonably relates in scale and kind to the development*” and that the sum “*does not exceed the authority’s estimate of its cost of monitoring the development over the lifetime of that development*”.

Whilst the monitoring costs of some types of developments can sometimes be predicted with reasonable certainty (particularly for smaller schemes), they can be much less certain for big, multi-phase, multi-year developments, perhaps with multiple developers, with obligations covering, for example, highways and travel, education, open space, play space, formal sports provision, community centres, affordable housing, library contributions and fire hydrant contributions. The potential for disagreements in estimates of such costs are obvious, and could easily lead to delays in completing planning obligations and therefore releasing planning consents. It would also appear not to be possible to come up with a published schedule of charges for monitoring – whilst education, open space and affordable housing contribution levels are typically known and published (£s per house, £s per expected pupil generated from new houses etc.), regulation 11 says that each development’s costs must be assessed individually.

Rather than requiring the lifetime cost of monitoring each individual obligation to be assessed, it would be much simpler and transparent to allow authorities to follow the CIL approach, which allows the authority to spend up to 5% of its total CIL receipts (per year) on administration costs (*PPG reference: Paragraph: 085 Reference ID: 25-085-20140612)*. Regulation 11 (which proposes to insert a new paragraph (2A) (a) and (b) to regulation 122, should therefore be amended to say that 5% of the total planning obligation costs for each such development (covering affordable housing, education, open space etc.) should be added to cover the costs of monitoring.

We do not see any elements in regulation 8, regulation 13, regulation 14 or regulation 15 that could prevent the Government achieving the policy intent and we believe these are likely to address the issues.