

## **Highbury Group on Housing Delivery**

### **Response to CLG consultation on Community Infrastructure Levy: Detailed proposals and draft regulations**

The Highbury Group on housing delivery is an independent group of specialists from public, private and independent sectors from housing, planning and related professions which prepares proposals for Government and other agencies on maintaining the output of housing including affordable housing having regard to the current economic and policy context. Membership and objectives are set out in an endnote.

## **1 Introduction and Core Objective**

- 1.1 We support proposals that make the planning system quicker, fairer and more efficient. The Community Infrastructure Levy has the capacity to help streamline the planning system and to provide additional certainty about the costs of development. However, our support is conditional upon CIL being designed and operated in a way that does not prejudice the delivery of affordable housing. This is also the Government's position. Greg Clark MP, the Minister for Cities, made it clear in debate on the Localism Bill in the House of Commons that CIL should not prejudice affordable housing. This was reiterated in the House of Lords by Lord Attlee who said

*'The statutory framework for CIL provides for protection for affordable housing. This was, no doubt, in the minds of the previous Administration when they implemented the levy. However, we acknowledge that the guidance does not set this out as clearly and robustly as it could. We will revisit the guidance to make it clear that the imposition of a levy must not harm the delivery of affordable housing or other local policies set out in the local plan. I have asked my officials to work with the National Housing Federation to develop appropriate changes and we will reflect on the outcome in updated guidance from the Secretary of State.'* (our emphasis)

- 1.2 Our responses to the questions reflect the overriding objective that CIL should not prejudice the delivery of affordable housing.

## **2 Neighbourhood funds**

### ***Overall Position***

- 2.1 We support the proposal that a proportion of CIL should be passed to the local community. However, care needs to be taken that this does not prejudice the delivery of the infrastructure that CIL is meant to support. In areas where CIL is not implemented, local authorities should be encouraged to set up similar neighbourhood funds, financed out of the planning benefit receipts.

### *Question 1*

*Should the duty to pass on a meaningful proportion of levy receipts only apply where there is a parish or community council for the area where those receipts were raised?*

### *Question 2*

*Do you agree that, for areas not covered by a parish or community council, statutory guidance should set out that charging authorities should engage with their residents and businesses in determining how to spend a meaningful proportion of the funds?*

- 2.2 Where they exist, parish councils in England are the best default recipient of the neighbourhood fund. Where they do not exist, neighbourhood fund should still be set aside, and the local authority is the best default party to hold those funds.
- 2.3 By "default" recipient we mean that they should be the party to whom responsibility for the fund should be passed if there is no better alternative. In both cases, there should be an ability for charging authorities to nominate an alternative recipient. If a body is able to meet the qualifying tests that apply to a "neighbourhood forum" in the Localism Act and are able to promote a neighbourhood plan, then that body should equally be capable of acting as custodian of a neighbourhood fund for that area.
- 2.4 In some areas this would allow, for example, housing associations or mixed business/residents groups or business improvement districts to be the recipient of the neighbourhood fund monies.

### *Question 3*

*What proportion of receipts should be passed to parish or community councils?*

- 2.5 We believe that the regulations should set a minimum and a maximum percentage of receipts to be passed to the neighbourhood fund. These limits would then be applied locally, having regard to the underlying requirement in the area to provide infrastructure to support development. [Our view is that the range should be between 5% and 15% and the % should be specified and tested as part of the examination of the CIL charging schedule]. It is important to have a maximum to guard against the prospect of too much money being diverted from non-local and strategic infrastructure needed to support development.
- 2.6 The consultation paper notes that charging authorities already have a discretion to pay CIL to third parties. However we do not think that this is an argument against a maximum percentage figure. Under the existing system, monies will normally be paid to a third party for the delivery of specific infrastructure. The charging authority will have to decide how, on balance, to best spend money on infrastructure. Their decision may be that the money is best spent, via a neighbourhood fund, on local

infrastructure; they should, however, only make that decision as part of an overall infrastructure investment and delivery plan.

*Question 4*

*At what level should the cap be set, per council tax dwelling?*

- 2.7 We support the proposal for a cap per household on the amount of money that is allocated to a neighbourhood fund.
- 2.8 Care will need to be taken not to penalise sparsely populated areas that choose to grow. A small parish or neighbourhood with a significant housing allocation that will increase the population, should be entitled to a neighbourhood fund to provide local infrastructure for that growing community. A cap set by reference to the number of homes before the start of development would penalise those very people that are meant to be incentivised by CIL.

*Question 5*

*Do you agree that the proposed reporting requirements on parish or community councils strike the right balance between transparency and administrative burden?*

*Question 6*

*Draft regulation 19 (new regulation 62A(3)(a)) requires that the report is to be published on the councils website, however we recognise that not all parish or community councils will have a website and we would welcome views on appropriate alternatives.*

- 2.9 We recognise the importance of transparency and accountability. We believe that the balance struck is appropriate.

*Question 7*

*Do you agree with our proposals to exclude parish or community councils' expenditure from limiting the matters that may be funded through planning obligations?*

- 2.10 The question seems to be based on a misunderstanding of the CIL regulations. CIL can be spent on any infrastructure supporting the development of its area (see regulation 59). The references in the consultation paper to restrictions and constraints in regulation 123 relate only to the contents of planning obligations. They do not, in any way, constrain how CIL can be spent.
- 2.11 Notwithstanding this error, our view is that the neighbourhood fund should be capable of being spent on any infrastructure and, now that the Localism Act is in force, on the

maintenance of that infrastructure. It should be for those in control of the neighbourhood fund to decide how best to use that fund.

### *Question 8*

*Do you agree with our proposals to remove the cap on the amount of levy funding that charging authorities may apply to administrative expenses?*

- 2.12 We do not agree that removing the cap on administrative expenses is acceptable.
- 2.13 The primary purpose of CIL is to fund infrastructure to support development. The more funds that are diverted away from this primary purpose, the less likely it is that the necessary infrastructure will be provided. This would affect housing delivery, and the ability of housing associations to provide affordable homes.

## **3 Affordable Housing**

### *Overall Position*

- 3.1 Affordable housing is a planning requirement, needed to secure mixed and balanced sustainable communities. This is very different from CIL, which is designed to raise money to pay for infrastructure needed to support development. While there are circumstances where it may be appropriate for CIL to be used to contribute to affordable housing provision, this should generally be to supplement the use of planning obligations rather than substitute for this.
- 3.2 Our concern is that if the CIL levy include the cost of providing affordable housing this would have the effect of commuting affordable housing requirements in some areas. This would, almost inevitably, lead to less affordable housing in the better locations, as CIL receipts would be used to fund affordable housing in less expensive areas, reducing the level of mix of tenure and income in the area where affordable housing is commuted. The use of CIL to support affordable housing should be set within the policy objective of facilitating the development and mixed communities as applies in the case of the use of s106 agreements to support off-site as opposed to on-site provision. Local authorities would be entitled to use CIL for any infrastructure, and although they might choose to spend any "affordable housing increment" on affordable housing, in many cases they would not do so. Commutation would also pose a serious threat to the supply of land for affordable housing; an issue not addressed in the consultation paper.
- 3.3 Consequently, we do not think that there should be any changes, in this area, to the existing regime, with two exceptions set out below. The following responses should be read in that context.
- 3.4 The two exceptions are:

- (a) where a threshold is set for affordable housing then an "affordable housing CIL" could be justified on schemes below the threshold. This would mean that all sites, small and large, would make an appropriate affordable housing contribution – small sites via an affordable housing CIL; larger sites by on-site provision.
- (b) it should be open to neighbourhood funds and charging authorities to spend CIL receipts on affordable housing, even where affordable housing does not form part of the "infrastructure" used to justify the CIL levy.

#### *Question 9*

*Do you consider that local authorities should be given the choice to be able if they wish to use levy receipts for affordable housing?*

- 3.5 We do not support the idea that CIL should be calculated to include the "cost" of affordable housing.
- 3.6 We note that the question relates to the use of "levy receipts". As indicated above, we do not object, per se, to the use of receipts in this way provided that CIL itself is not set in a way that includes affordable housing as infrastructure.

#### *Question 10*

*Do you consider that local authorities should be given the choice to be able if they wish to use both the levy and planning obligations to deliver local affordable housing priorities?*

- 3.7 We recognise that in certain circumstances it may be appropriate for local authorities to use both the levy and planning obligations to deliver affordable housing.
- 3.8 We do not think that the proposed approach, that would see local authorities setting their policies on commuting affordable housing via CIL in local plans as an appropriate or balanced way in which to address this issue. If a local authority wishes to adopt such a solution, usually with the support of the benefiting landowner, it will be very difficult for an objector, seeking to promote mixed and balanced communities to "win" the argument at inquiry. In practice, an objector has to prove that the approach is not "*most appropriate*". Experience suggests that this is a difficult burden to discharge.

#### *Question 11*

*If local authorities are to be permitted to use both instruments, what should they be required to do to ensure that the choices being made are transparent and fair?*

3.9 See above.

*Question 12*

*If the levy can be used for affordable housing, should affordable housing be excluded from the regulation that limits pooling of planning obligations, or should the same limits apply?*

3.10 If the Government insists on allowing the commutation of affordable housing then, clearly, affordable housing should be excluded from the pooling restrictions in regulation 123.

#### **4 Mayoral Development Corporations**

*Question 13*

*Do the proposed changes represent fair operation of the levy in Mayoral Development Corporation areas?*

4.1 It would be helpful if the Government could identify why a different approach is being adopted to MDCs, given that UDCs were not permitted to be charging authorities.

4.2 As a matter of detail, future MDCs outside London may not take over full planning powers, leaving some classes of planning application to be determined by the underlying planning authority. Any regulations will need to be clear whether those classes of development will be charged the local charging authority or MDC CIL

Endnote: Objectives and Membership of Highbury Group on Housing Delivery

The group was established in 2008 as the Highbury Group on housing and the credit crunch and originally met at London Metropolitan University in Highbury Grove, Islington, London (thus the name). The group's name was changed in September 2010 and it now meets at the University of Westminster, 35 Marylebone Road, London NW1

It comprises the following core members: Duncan Bowie - University of Westminster (convener); Stephen Ashworth – SRN Denton ; Julia Atkins - London Metropolitan University; Bob Colenutt - Northampton Institute for Urban Affairs ; Kathleen Dunmore - Three Dragons ; Michael Edwards - Bartlett School of Planning, UCL; Deborah Garvie - SHELTER ; Stephen Hill - C20 Futureplanners ; Angela Housham - Consultant ; Seema Manchanda - L B Wandsworth; Kelvin McDonald - Consultant ; Dr Tony Manzi - University of Westminster; James Stevens - HomeBuilders Federation ; Peter Studdert – Planning consultant ; Janet Sutherland - JTP Cities; Paul Watt - Birkbeck College ; Nicholas Falk- URBED; Catriona Riddell – Planning Officers Society; Alison Bailey – consultant; Richard Donnell – Hometrack; Richard Simmons; Nicholas Falk (URBED); Peter Redman (Housing Futures)

The views and recommendations of the Highbury Group as set out in this and other papers are ones reached collectively through debate and reflect the balance of member views. They do not necessarily represent those of individual members or of their employer organisations. .

Contact: Duncan Bowie [d.bowie@westminster.ac.uk](mailto:d.bowie@westminster.ac.uk)

Senior lecturer in spatial planning

University of Westminster

35 Marylebone Road

London NW1 5LS

020 7911 5000 x3462