

Report to GNDP Policy Group - 25 March 2010

Securing developer contributions - options

1. Summary

The Greater Norwich area has a huge infrastructure challenge to deliver the required level of Growth. This will be a key issue for the Examination into the Joint Core Strategy as GNDP will be required to demonstrate that it has considered deliverability including developer contributions. GNDP has already done a considerable amount of background work on infrastructure needs- through the EDAW "Infrastructure Needs and Funding Study" and is progressing delivery and funding priorities through the Integrated Development Programme (IDP). Whilst the GNDP local authorities have been reasonably successful in securing contributions from developers through s.106 agreements, the new approach proposed through the Community Infrastructure Levy (CIL) provides a more effective approach to maximising developer contributions. Further work will be needed to progress this approach in line with the timetable for the JCS examination and run up to adoption. Any work associated with consideration of a CIL would equally apply to a tariff-based approach if a CIL is not taken forward by Government.

2. Recommendations

GNDP Policy forum is recommended:

- a. To confirm the development of CIL or a tariff based approach to developer contributions so that certainty and progress on the proposed approach can be demonstrated at the examination into the JCS;
- b. To agree that further work is undertaken:
 - o To determine the scope of infrastructure to be covered by CIL (or a tariff) and the elements that should be addressed through s.106
 - o To determine the most effective mechanism for collaboration by GNDP local authorities in developing charging schedules and coordinating decisions on spending priorities
 - o To develop a more detailed timetable and resource plan (for approval by GNDP Directors) in particular to address the need for legal and development economics advice to develop CIL
- c. To consider a more detailed progress update at a meeting in May 2010 in advance of the JCS Examination.

3. Introduction

3.1 Policy 20 in the JCS sets out the approach to infrastructure delivery for Greater Norwich and provides a context for considering the issues in this report:

"A coordinated approach will be taken to the timely provision and ongoing maintenance of infrastructure, services and facilities to support development.

Provision will be achieved through:

- o contributions towards strategic infrastructure from all residential and commercial development, made through the introduction of an area-wide Community infrastructure levy (when the legislation is finalised) plus appropriate Section 106 contributions for site specific needs. Until legislation is finalised all contributions will be made through section 106."

3.2 GNDP has already done a considerable amount of work on examining infrastructure requirements. The Infrastructure Needs and Funding Study produced by EDAW in October 2009, looked at the overall infrastructure needs for delivering growth in Greater Norwich. As part of this work, EDAW examined the scope for raising a tariff to secure developer contributions.

3.3 The Integrated Development Programme (which is currently being reviewed and updated) looks in detail at infrastructure priorities for growth and the critical funding and timing dependencies.

3.4 CLG has recently issued regulations for the introduction of a community infrastructure levy (CIL) following consultation between July and October 2009. The regulations will come into force from 6 April 2010, subject to parliamentary approval. The issues in this paper are equally applicable to any likely tariff based approach which may be introduced.

4. Background to CIL

4.1 CIL will be an optional new charge which local authorities will be empowered *but not required* to charge on most types of new development in their area. Once the regulations are introduced local authorities will be able to bring charging schedules into effect. CIL can only be introduced where there is an approved Joint Core Strategy in place (or in conjunction with the preparation of a core strategy). For Greater Norwich, the earliest that CIL could be introduced would be December 2010, if the JCS is found to be sound, and is formally adopted by the respective local planning authorities although preparatory work would need to be undertaken before then to allow CIL to be implemented as soon as possible after that.

4.2 The benefits of CIL are that:

- It provides greater certainty for developers
- It is transparent in that the rate is fixed so there is very limited scope for negotiations
- It is fair as a broader range of developments will contribute, even small developments
- It can fund sub regional infrastructure
- It can be linked with other forward funding regimes e.g. the government would allow prudential borrowing to forward fund infrastructure with the investment secured against future CIL income. How this would work in practice is unclear, particularly in respect of who takes the financial risks in terms of the borrowing.

(a) Charging authorities

4.3 All local authorities who prepare development plans will be charging Authorities- for GNDP this includes the district councils plus the Broads Authority. It is understood from the Regulations that County Councils will not be a Charging Authority, although they will be a Collecting Authority ((depending on the type of development e.g. in relation to development the County Council gives consent to, such as schools and libraries). The process of setting CIL should start with infrastructure planning to identify the likely cost of infrastructure coming forward. Much of this information for GNDP is available through the EDAW study. Taking other sources into account the charging authority should identify gaps in funding to arrive at a proposed amount to be raised from CIL. This should be subject to an assessment of local development viability at the plan or area level and an *indicative* list of projects that it would be intended to fund. This will need to be flexible given the timeframe over which CIL will apply. The charging authority should prepare a charging schedule which will allocate the proposed amount to be raised from CIL to each main class of development on a cost per square metre of floorspace. It should not be set at a level that risks the delivery of the development plan by making development unviable. It will be possible to charge differential rates to cover viability issues (only if evidence deems it is appropriate) based on geographical areas, or sub zones and land use. Charging schedules are subject to consultation and examination similar to a DPD. The issue of area based viability is likely to be one of the key challenges in setting CIL at a realistic level.

(b) Collecting authorities

4.4 In most circumstances collecting authorities will be the charging authority but the draft regulations do enable charging authorities to appoint another agency to collect funds on their behalf where the agency consents developments. For GNDP this would only apply if a Joint Committee was established which had planning powers (delegated to it by all the local

planning authorities) or the County Council for development that it is responsible for e.g. schools, libraries.

(c) Spending authorities

4.5 Generally charging authorities will be the spending authorities. Charging authorities can spend or distribute CIL revenue to other bodies to spend on infrastructure.

5. Limitations of continuing with s.106

5.1 CIL is optional local authorities could continue to use S.106 agreements to secure developer contributions. In some ways this might be viewed as beneficial:

- S.106 is ready to use- policies and procedures are already in place and it is understood by all;
- It is flexible and allows for negotiation on a site specific basis
- It is fair as it takes account of existing capacity e.g. in schools and relates to the development in question.

5.2 However the government proposes to restrict the use of planning obligations and to clarify the current policy tests (in circular 5/05) and make them statutory – (see Appendix 1). This would mean that planning obligations could *only* be applied to mitigate the impact of the development in question and can not be applied to address the cumulative effects of development. This would prevent future tariff schemes based on s.106 and would stop the pooling of contributions (from 5 or more individual developments). There would be a 4 year transitional period and the restrictions would take effect from April 2014. In future it will not be possible to fund sub regional infrastructure through s.106.

5.3 The 3 district councils in GNDP have been successful in recent years in securing developer contributions through s.106 agreements with almost £7.2M secured in Norwich, £3.3M in Broadland and £12.9M in South Norfolk. The 3 districts have collectively secured over £14.7M for the County Council over the last 5 years for transportation, education, library and fire service provision. Further contributions and works have been secured under S.278 of the Highways Act. It is understood that under the CIL Regulations, S.278 (Highway Agreements) would still be allowed to deal with direct impact mitigation works (e.g. highway improvements to secure safe access to a site).

5.4 Based on a sample of schemes in the City the average amount per dwelling that has been secured in recent years from s.106 (cash and on site contributions) ranges from around £3,500 to £7,000 per dwelling.

However the amount that has been secured in recent years is significantly less than the funding gap identified in the study. It is also significantly less than the rates suggested as a tariff in the EDAW Infrastructure Needs and

Funding Study that could be achieved even in a weak market based on an assessment of realistic land values, where social housing grant is included:

- Broadland (Sprowston/ Rackheath)- £5,000 -12,000 per dwelling
- Norwich- £13,500-16,000
- South Norfolk (Norwich Housing market area)- £4,000 -12,000

5.5 If GNDP decides to continue with s.106 and not adopt the CIL approach it is likely that significant developer contributions would be missed. In Norwich pooled contributions for transportation, children's play and open space could no longer be collected.

5.6 All districts apply thresholds below which s.106 contributions are not sought e.g. Norwich City Council does not seek open space contributions on schemes of less than 10 child bedspaces; the County Council currently only seeks developer contributions on sites of 20 dwellings or over (25 or over in the City).. The 3 district councils have "missed out" on contributions from between 24% and 60% of schemes granted in the last 5 years. In Norwich this equates to over £1.2M in missed contributions (not including County contributions) from schemes that fall below the thresholds for contributions- see details in Appendix 2). CIL would provide an opportunity to ensure that all developments contribute to infrastructure and contributions from small schemes are not missed.

6. Scope of infrastructure to be included in CIL

6.1 The planning act makes clear that CIL may only be spent on infrastructure but the definition, though not precisely defined, is wide and includes transport and flood defences plus schools, sporting and recreational facilities and open spaces, health and social care facilities, police stations and other community safety facilities, local renewables, district heating etc. CIL will not be able to be applied to affordable housing and there will be opportunities for setting reduced rates (up to 100% exemption) for public buildings e.g. schools, libraries, hospitals. The regulations allow flexibility so that local authorities can decide on the range of infrastructure to be funded through CIL in their area recognising that priorities will vary from area to area. CIL should be used to fund the infrastructure needs of development included in the development plan for the area, not to address existing deficiencies (except where exacerbated by new development). CIL will not make up the shortfall in infrastructure funding but will make a significant contribution towards it.

6.2 GNDP will need to consider (in broad terms) the range of infrastructure that it wishes to include- it could be based on the whole range of infrastructure included in the EDAW study which includes transport, health, utilities etc or it could be more narrow focusing on infrastructure currently covered through s.106.

6.3 S106 for certain contributions even where CIL is taken forward, in particular affordable housing, land transfer (e.g. for community use such as schools) and site specific mitigation measures (e.g. highway works and schools). A combined approach is likely to be preferable to cover all requirements and this is permissible so long as it is clear that there is no “double counting” (i.e. avoid charging a developer twice for the same infrastructure provision). One option may be to set CIL at a fairly low level or at a level which covers the strategic infrastructure and use s.106 to deal with other requirements.

7. CIL delivery options

7.1 If CIL is adopted by all GNDP districts then there are a number of ways that this could be taken forward. These are set out below and summarised in the table in Appendix 3:

Option 1- Each district sets its own charge and spends on infrastructure in its own area. This option could necessitate 3 separate examinations with the associated costs. It would allow each area to retain control over CIL but could mean that opportunities to fund sub regional infrastructure would be lost and there could be less certainty in securing contributions for other agencies e.g. the County Council for education and transportation.

Option 2- Districts collaborate on developing the charging schedule (possibly with a joint examination) and whilst each district will take responsibility for decisions on spend this is coordinated sub regionally through informal agreement. This would allow the district councils to agree voluntarily to fund sub regional infrastructure through CIL. There would be separate charging schedules (based on viability in the district area) which would need to include reference to sub regional infrastructure. This route would allow flexibility but provides no certainty that each district would contribute funds for sub regional infrastructure when required.

Option 3- Establishing a more formal mechanism for joint working (the regulations are somewhat unclear about this but it could be via a joint committee or LDV) with the district councils all agreeing to delegate certain CIL functions. This could allow for a CIL to be set on a sub regional basis with variations based on viability for specific geographic areas. It would allow for funds to be collected and decisions on expenditure to be made on a GNDP wide basis. This would give the greatest certainty about funding sub regional infrastructure and (if County Council/ other agencies were included) the certainty about release of funding to other agencies. It would provide the greatest degree of certainty if prudential borrowing were used to forward funds infrastructure against future CIL revenue. District Councils, however, may feel they were losing control in this option and potentially missing out on funding for their area. The establishment of a Joint Committee able to exercise such powers would require formal agreement and delegation of the relevant powers, and confirmation by the

Secretary of State under S29 of the Planning and Compulsory Purchase Act 2004.

8. Support and advice for taking the CIL work forward

8.1 Legal and development economics advice (especially re viability) will be needed to develop CIL and the charging schedule(s). There are likely to be economies of scale in GNDP districts taking this forward collectively.

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15 March 2010

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Appendix 1.

<i>Circular 5/05 tests</i>	<i>CIL Regulations 2010- limitations on use of planning obligations</i>
1. Necessary to make the proposed development acceptable in planning terms;	(a) necessary to make the development acceptable in planning terms
2. Relevant to planning;	
3. Directly related to the proposed development;	(b) directly related to the development; and
4. Fairly and reasonably related in scale and kind to the proposed development; and	(c) fairly and reasonably related in scale and kind to the development
5. Reasonable in all other respects.	

Appendix 2.

S.106 contributions negotiated in the last 5 years (2004/5- 2008/9).

s.106 contributions	Broadland District Council	South Norfolk District Council	Norwich City Council
Open space/play (other landscape)	1,0167,763	496,449	3,721,260
Community facilities		338,368	40,000
Transportation etc			1,914,753
Affordable housing	477,504		500,000
Other		1,100	5,500
Contributions secured for Norfolk County Council			
Education	1,163,853	8,700,000	336,140
Libraries	18,960	154,060	33,340
Transportation	581,892	3,120,375	621,931
Sub total	1,764705	11,974435	991,411
TOTAL	3,263,972	12,877,791	7,172,924

Note- includes all schemes- housing and other uses.

% of dwellings permitted with no s.106 contributions (2004/5- 2008/9)

	Broadland District Council	South Norfolk District Council*	Norwich City Council **
Total dwellings permitted	2382	3639	6734
Dwellings with no s.106	1408	900	1616
% dwellings permitted with no s.106	60%	25%	24%

Notes:

* figures based on nos. of dwellings completed in the period

** figures based on dwellings commenced or completed in the period

Appendix 3- CIL Delivery Options

	Implications	Mechanism for introduction
Option 1- Each district to set own charge and spend on own district	<ul style="list-style-type: none"> • Allows districts to control the level of CIL and expenditure in their area • Each district may define the scope of infrastructure differently • Differential levels of CIL between district may prejudice timing of development coming forward • No guarantee for County and other agencies that are reliant on CIL to deliver infrastructure that Council's will provide funding • No scope for funding sub regional infrastructure 	<ul style="list-style-type: none"> • Each district prepares its own charging schedule • Each district has its own public examination • Each district collects and spend its own CIL revenue
Option 2- Each district sets own charge (based on agreed infrastructure definition) but coordinate spend sub regionally through informal agreement	<ul style="list-style-type: none"> • Allows districts to control the level of CIL in their area • Each district may define the scope of infrastructure differently • Differential levels of CIL between district may prejudice timing of development coming forward • Allows CIL to be used for sub regional infrastructure • Spending priorities may be agreed informally but no guarantee that the funds will be made available when required 	<ul style="list-style-type: none"> • Each district prepares its own charging schedule (but based on the same infrastructure definition) • Each district has its own public examination • Each district collects its own CIL revenue • Informal agreement about the infrastructure priorities to receive funding
Option 3- Formal mechanism for joint working (joint committee or LDV)	<ul style="list-style-type: none"> • May be perceived loss of control by district councils • May be difficult to agree the level of CIL for whole GNDP area based on viability • Allows sub regional infrastructure to be funded • Provides certainty about funding for sub regional 	Support from all charging authorities would be required to establish delegation arrangements and confirmation by the Secretary of State required under S29 of the Planning and Compulsory Purchase Act 2004.

	<p>infrastructure</p> <ul style="list-style-type: none">• Would provide certainty to forward fund using prudential borrowing• Could allow for cross subsidy of infrastructure costs across the GNDP area	<ul style="list-style-type: none">• Separate but coordinated charging schedules prepared subject to joint public examination• Joint committee could collect funds for GNDP area• Joint committee/ldv would be consulted (or could take decisions, if delegated) on how money collected would be spent
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