

HAMPSHIRE COUNTY COUNCIL

Decision Report

Decision Maker:	Cabinet
Date:	29 September 2020
Title:	Changes to the Planning System, Major Developments and Infrastructure Funding
Report From:	Director of Economy, Transport and Environment

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Purpose of this Report

1. The purpose of this report is to update Cabinet on the latest position with regard to proposed changes to the planning system, major developments within Hampshire, and on the closely related issues of developer contributions and infrastructure funding. This update follows an earlier report considered by Cabinet in December 2017.

Recommendations

1. That the Cabinet agrees:
 - a. The principle of the County Council fully utilising existing provisions under section 106 of the Town and Country Planning Act 1990 to secure the necessary infrastructure to mitigate the impact of development, including the cumulative impact of smaller developments;
 - b. That a corporate policy setting out the County Council's infrastructure and developer contribution requirements be developed based on the principles set out in the report and that authority be delegated to the Leader for final approval of the policy;
 - c. That a planning obligations monitoring fee be introduced as of 1 October 2020 to support the efficient monitoring and management of developer contribution funds and legal agreements; and
 - d. That a corporate response to the white paper, 'Planning for the Future', and the consultation document 'Changes to the Current Planning System' be prepared along the lines set out in the report, with authority delegated to the Leader, in consultation with the Deputy Leader, for final approval and submission of the County Council's response.

Executive Summary

2. This paper seeks to:

- outline the current position with the Major Developments in the County;
- provide an update on developer funding;
- set out proposals for a corporate infrastructure and developer contributions policy;
- set out proposals for a planning obligations monitoring fee; and
- highlight the headlines in the current white paper consultation, Planning for the Future and the consultation document 'Changes to the Current Planning System'.

Introduction

3. Since the last update to Cabinet in 2017 there have been a number of changes to the planning system and the way it operates. Last year the Government issued revised guidance to Local Authorities on carrying out housing and economic needs assessment which introduced a standard methodology for assessing housing.
4. This was supported by a revised National Planning Policy Framework which requires local authorities to use the standard methodology to assess whether they have a five-year land supply, and removed ambiguity regarding the presumption in favour of sustainable development by confirming it will not apply where there are effects on a habitats site unless an appropriate assessment concludes that negative impacts will not occur.
5. In addition to these changes, sanctions have now been introduced for local planning authorities that are not meeting the housing delivery targets set out in their Local Plans as follows;
 - the authority should publish an action plan if housing delivery falls below 95%;
 - a 20% buffer on the local planning authority's 5-year land supply if housing delivery falls below 85%; and
 - application of the presumption in favour of sustainable development if housing delivery falls below 75%.
6. In Hampshire, Gosport Borough's housing delivery for 2019 was 87% and therefore a Delivery Action Plan has been prepared. The housing delivery for New Forest District Council (adjusted for the National Park) was calculated as 43% and that triggered the presumption in favour of sustainable development. However, following the adoption of their Local Plan 2016-2036 Part 1: Planning Strategy earlier this year, the District Council now has a Delivery Test measurement of 108% with no sanctions.
7. Whilst there have been a steady number of planning applications for housing developments over the past few years, the number of permissions issued has reduced in the south of the County due to an issue that has arisen regarding the level of nitrates entering the Solent which is designated as a Special Protection Area (SPA). Following a European court judgement, Natural England has advised local authorities to consider the implications of all new housing developments increasing the level of nitrates entering the Solent via Wastewater Treatment Works as per the Habitats Regulations requirements. Consequently,

some local planning authorities have felt unable to issue permissions without a clear strategy for mitigating this impact. Work on identifying potential mitigation options is ongoing.

8. The drive by the Government to see increased housing delivery has put further pressure on local planning authorities, despite the fact that they are only responsible for issuing permissions and not the direct delivery of housing schemes. The nitrates issue in the south of the County has compounded this by significantly reducing the number of planning consents being granted. As such there is now increased scrutiny of housing proposals, particularly in relation to the viability of schemes as a result of the infrastructure requirements of statutory bodies such as the County Council.
9. The effects of the Covid-19 pandemic have placed additional significant pressure on the industry; with planning decisions delayed, start dates of construction sites postponed, and the shutdown of many sites in the lockdown period. This has, and will continue to have, a considerable effect on the timing and quantum of housing delivery, and an associated impact on the developer contributions which were expected to be received by the County Council; it also raises the potential for delayed section 106 payments. This is an emerging reality as the economy moves into deep recession and the situation is being monitored.
10. These changes, along with changes to the way infrastructure is funded, mean that the County Council is increasingly required to provide detailed justification on an individual development by development basis, for infrastructure provision, such as new schools, transport improvements or extra care facilities.
11. Finally, the government issued the 'Planning for the Future' white paper consultation in August. This proposes a radical shake up of the planning system. Alongside this the government has also issued a further consultation, 'Changes to the Current Planning System', which looks at more immediate and interim change to the existing system.
12. The Council is considering the implications of the proposed changes and will be drafting responses to the consultations. This consideration is expected to include an All Member briefing, with the final responses recommended to be signed off by the Leader in consultation with the Deputy Leader.

Government consultations on the Planning system

13. The ['Planning for the Future'](#) white paper proposes fundamental reforms to the planning system in England (see Briefing Note at **Appendix A**). The proposed reforms are seeking to:
 - streamline the planning process with more democracy taking place more effectively at the plan making stage.
 - take a radical, digital-first approach to bring about modernisation of the planning process by moving from a process based on documents to a process driven by data.
 - bring a new focus on design and sustainability, particularly in the climate change context.

- improve infrastructure delivery in all parts of the country and ensuring developers play their part, through reform of developer contributions.
 - ensure more land is available for homes and development and to support renewal of town and city centres.
14. The consultation proposes that Local Plans will become much more standardised, and map led so that they are easier to understand and interpret on both a local and national level, with site allocations made on a much more definitive basis, so that in principle development is granted for sites at the point that a Local Plan is adopted.
 15. The proposals seek to identify three types of land; **Growth** (areas suitable for substantial development), **Renewal** (areas suitable for development in already developed spaces) and **Protected** (e.g. land currently identified as AONB, Green Belt, conservation areas etc. It is noted that the consultation document does not refer to National Parks in the examples of 'Protected' areas). This new approach to land categorisation represents a step towards a 'zonal' planning system.
 16. One of the most important proposals and potentially most impactful for the County Council is the proposal to abolish S106 obligations and the CIL regime and replace both with a national Infrastructure Levy (IL). This will be nationally set and based upon a flat rate, value-based charge but have a threshold below which contributions would not be sought. The proposed changes would also seek to capture contributions from dwellings created under "permitted development", which currently fall outside the existing CIL and S106 regimes and has resulted in new dwellings across Hampshire, and a consequential increased pressure on schools and roads, without developer funding to mitigate it. This levy would be charged on the final value of a development, to capture some of the uplift in land value brought about because of the permission and would be levied on occupation and not on commencement to assist with affordability and viability for small building companies. Whilst the detailed working of any such system has yet to be set out, the deferral of payment to the end of construction would seem to go against the principle of up front infrastructure provision, which has been County Council policy, and such an important component of successful major developments in Hampshire, such as Whitehill Bordon. It may also introduce complications and risks related to any changes in circumstances, fluctuations in the market or revised infrastructure need over time, especially on large sites where there may be a significant period between IL calculations at the application stage, and when payment is due at the first occupations of the dwellings.
 17. Views on the consultation are currently being sought from colleagues across the County Council. While there is clear benefit in developing a more streamlined and efficient planning system there are some initial issues identified which are set out below, with further detail contained in the Summary at **Appendix A**.
 - a. How will the Infrastructure Levy work in practice and could/should upper tier authorities be specifically named as collecting authorities if this proposal is followed through?
 - b. Abolition of S106 – these are not only used for financial contributions, but also to directly secure infrastructure and other provisions. How will

infrastructure and other obligations be secured in the absence of S106?

- c. Proposal to abolish the Duty to Cooperate – how will this affect the ability to plan strategically across authorities within Hampshire (e.g. for transport and Minerals and Waste Local Plan work)?
- d. Proposal to ensure publicly owned land disposal and public investment in development supports thriving places, such as to support renewal and regeneration of town centres and support the SME and self-build sectors. This appears to add greater burdens to the disposal of public sector land and/or projects.
- e. Proposal to identify all land under one of 3 headings – this feels a blunt instrument in areas of constrained land and limited scale. The available land will be difficult to define in such black and white terms within existing complex urban/rural landscapes. The proposed approach does not appear sufficiently sophisticated to consider and retain the quality and diversity of places across Hampshire.
- f. Where land is designated under Growth or Renewal, how will the County Council engage as landowner or infrastructure provider if permission is automatically granted? Delivering the right infrastructure at the right time in the right place is essential through the early master planning of the development prior to permission being granted.

18. The deadline for the submission of comments on the consultation is 29 October 2020 and officers are in the process of preparing a draft response.

19. Alongside the 'Planning for the Future' document, the government has also issued a further consultation, '[Changes to the Current Planning System](#)'.

20. This paper is much more succinct in its proposals and focusses on interim amendments to the existing planning system, rather than the radical overhaul of the system proposed in the Planning for the Future consultation. This will have a more direct impact on District and Borough Councils, but it also has some fundamentally important indirect impacts on County Councils in two tier areas, particularly housing proposals and allocations which do have the potential to impact the County Council's statutory interests as part of the wider picture.

21. There are four main changes proposed in the document:

- a. Changes to the standard method for assessing local housing need.
- b. Securing of 'First Homes', sold at a discount to market price for first time buyers, including key workers, through developer contributions in the short term until the transition to a new planning system. The Government intends that a minimum of 25% of all affordable housing units secured through developer contributions should be First Homes.
- c. Temporarily lifting the small sites threshold below which developers do not need to contribute to affordable housing, from the current threshold of up to 10 units, to up to 40 or 50 units, for an initial period of 18 months.

- d. extending the current 'Permission in Principle' to major development, providing landowners and developers with a faster route to securing the principle of development for housing sites.
22. The proposed change to the methodology for assessing housing need is causing much debate around the effects of potentially lowering supply in urban areas and raising the requirement in shire areas. The likely change in figures for the Hampshire Districts is set out in the table attached as **Appendix B**. Of particular note is the effect in Basingstoke, which is likely to see a lower housing requirement, compared to Test Valley and East Hampshire, which see a significant increase. This shift could have clear implications for County Council provided infrastructure such as schools and transport.
23. There are also concerns that in addition to binding national housing targets, the extension of the 'Permission in Principle' approach will significantly erode local control over development and that the increase in the threshold at which affordable housing must be provided, even for a temporary period, will severely disrupt much needed provision.
24. In this case the consultation closes on 1 October 2020 and a response is being prepared for sign off by the Leader in consultation with the Deputy Leader.

Update on Major Developments

25. There are some significant emerging developments in the waterside area of the New Forest/Southampton, with proposals for the redevelopment of the former **Fawley Power Station**, emerging proposals at the **Marchwood Military Port** and potential expansion of Southampton Port into Associated British Port's (ABP) Strategic Land Holdings across Southampton Water. The County Council is working closely with New Forest District Council, New Forest National Park Authority, Solent LEP and the strategic landholders in the area regarding an overarching strategy for the area. The applications for 1,500 homes and employment uses on the site of the former Fawley Power Station were considered by New Forest District Council and New Forest National Park Authority in late July with resolutions to grant permission subject to a S106 Agreement. The applications seek to secure a package of infrastructure improvements including off-site highway works, rights of way and countryside access improvements, and the site for a new 2-Form Entry primary school.
26. An expected announcement on future proposals from ABP in respect of the waterside area was due last September but this was delayed, and at the time of drafting the report, is still awaited. It is likely that such a proposal would fall within the definition of a Nationally Significant Infrastructure Project. A proposal for a significant upgrade of the diesel fuel production capacity at the Exxon Mobil refinery has recently been granted planning consent by New Forest District Council.
27. Basingstoke and Deane Borough Council resolved to grant planning permission on 8 July 2020 for the development of up to 3520 homes on land it controls with the County Council at **Manydown**. The S106 Agreement is now being

progressed with a view to completing it as soon as possible to enable planning permission to be granted. The County Council has put forward land to enable delivery of **Manydown South** as part of Basingstoke and Deane Borough Council's 'call for sites' exercise for their Local Plan review. This site is located to the south of the Manydown allocation for which planning permission is expected to be issued and would enable the delivery of a further 5,000 homes. The County Council has also put forward **Land to the East of Basingstoke** which is capable of delivering 900 homes but critically can unlock further potential development land in private ownership adjoining it.

28. The submitted Eastleigh Local Plan promotes a **Strategic Growth Option** in an area between Fair Oak and Bishopstoke which will deliver 5,000 homes and associated infrastructure, including a new link road and improvements to M3 Junction 12. The Eastleigh Local Plan examination concluded in January and the deliverability of this option, particularly the link road which has been estimated to cost in the region of £50 million, formed a key part of the hearing sessions. The examination closed at the end of January and a letter from the Inspector was received by the Borough Council in April. This set out some concerns in relation to the spatial strategy evidence and comparison of options. Eastleigh Borough Council is currently considering its next steps.
29. **Shapley Heath Garden Village** is an area covering the Murrell Green/Winchfield area of Hart. Despite not being an allocated site within the current local plan, it was the subject of a successful Garden Communities bid and has been awarded some funding by the Ministry of Housing, Communities and Local Government to test the proposal further. At present the proposal is for up to 5,000 homes, a secondary school, as well as a range of other school, health care, employment and retail opportunities. Fundamental to the bid was that the site would also enhance community facilities by including a new country park, sports facilities and play parks. Hart District Council is now working on setting a programme for testing this proposal which will be a separate workstream to the Local Plan, which will be published for final consultation shortly.
30. Landowners are promoting the development of land at **Micheldever Station** through Winchester City Council's Local Plan process. With a development of up to 6,000 homes centred around the existing station, initial masterplanning has commenced and early discussions have been held with the various County Council services likely to require the provision of new or improved infrastructure if development came forward in this area.
31. Test Valley Borough Council has acquired significant land within Andover Town Centre to enable it to facilitate its redevelopment. The main driver behind the proposals is to ensure that Andover Town centre can be competitive and viable in the face of the national trend of declining town centres. The Borough Council is keen to work with the County Council, along with the Enterprise M3 LEP, to identify funding opportunities for their plans. The County Council will have an important part to play both as an infrastructure provider and from the One Public Estate perspective, though it will be important to ensure that any proposals are future proofed and economically robust. The County Council is also engaged in town centre regeneration proposals in both Havant and Farnborough and is working with the borough council on regeneration proposals for the waterfront town centre areas in Gosport.

32. Early discussions have been held with a promoter of a mixed-use development at the former **Bushfield Camp** in Winchester. The site is allocated for employment in the current Winchester Local Plan, but this is likely to be reviewed as part of the forthcoming Local Plan review. Discussions have also taken place regarding the redevelopment of the **St John Moore Barracks** to the north of Winchester.
33. This is just a selection of the planned development proposals but there is a significant amount of activity across the County at present, particularly in relation to emerging local plans and site allocations, which the County Council is involved with.
34. Although not housing related, a planning application for the extension of the runway at Southampton Airport has been submitted to Eastleigh Borough Council with determination expected in the autumn. In Basingstoke, proposals for a new hospital near J7 of the M3 are continuing to emerge.

Nationally Significant Infrastructure Projects

35. There are a number of Nationally Significant Infrastructure Projects within Hampshire that are currently registered with the Planning Inspectorate. These include significant improvements to **M3 Junction 9** to provide dedicated on and off slips for traffic travelling from the A34 to the M3 and vice versa; replacement of the **Southampton London Pipeline** which takes fuel from Esso's refinery at Fawley to Hounslow to serve Heathrow airport; and the **Aquind Interconnector** which will provide a connection to the French national grid via a cable which will land at Eastney in Portsmouth and go up to a converter station in Lovedean, Waterlooville.
36. Each of these projects will be determined by the relevant Secretary of State following a public examination managed by the Planning Inspectorate. The County Council is deemed to be a host authority in each case and will play an important role in commenting on the proposals as they evolve. If ABP's proposals to expand the Port of Southampton come forward this will be likely to be a Nationally Significant Infrastructure Project and therefore will follow the same process. The proposal for the Wheelabrator Harewood Waste to Energy Facility at the A303 near Barton Stacey was withdrawn by the operator in February following an initial public consultation on the environmental impact statement.

Update on Developer Funding

37. The Community Infrastructure Levy (CIL) Regulations came into force in April 2010 and changed the way that the County Council was able to secure developer funding for infrastructure. Section 106 obligations were restricted both by the introduction of a pooling limit of five obligations for any infrastructure type or project and the exclusion of proposals contained within the Regulation 123 lists of those authorities that implemented CIL. The County Council therefore had to change the way that it sought to secure developer funding in order to comply with these Regulations.
38. Despite these challenges, the County Council has been able to maintain income from developer contributions (overwhelmingly from section 106 agreements) in

order to support the provision of infrastructure to mitigate the impact of development. The full impact of CIL on developer contributions is difficult to quantify because not all authorities have implemented it and Hampshire County Council is still collecting contributions from agreements that were signed before the CIL Regulations came into force. There will therefore be a time-lag in the impact on contributions collected which will become more apparent as permissions issued post CIL are implemented.

39. Table 1 sets out the status of CIL in Hampshire, highlighting when authorities adopted it, how much they have collected in total and the amount of funding that has been passed to the County Council.

Table 1: Implementation of CIL across Hampshire Authorities

Authority	Date CIL Implemented	Total collected (up until 31 March 2019)	Total passed to the County Council
Basingstoke and Deane	25 June 2018	£0	£0
East Hampshire	8 April 2016	£3,992,197	£0
Eastleigh	N/A	-	-
Fareham	1 May 2013	£10,773,472	£0
Gosport	1 February 2016	£867,762	£0
Hart	N/A	-	-
Havant	1 August 2013	£6,231,679	£0*
New Forest District	6 April 2015	£3,799,005	£0**
New Forest NPA	N/A	-	-
South Downs	1 April 2017	£2,161,299	£0
Test Valley	1 August 2016	£1,681,359	£0
Rushmoor	N/A	-	-
Winchester	7 April 2014	£9,304,285	£1,543,337

*CIL funds have been applied to a County Council transport scheme but not passed directly to the County Council

** In NFDC the first call on any CIL funds is for habitat mitigation projects under the Council's adopted Mitigation Strategy SPD as required by the Conservation of Habitats and Species Regulations 2010.

40. The National Planning Policy Framework (2019) updated the advice on using planning obligations. Additional text has been added which states that: *'Where up-to-date policies have set out the contributions expected from development, planning applications that comply with them should be assumed to be viable. It is up to the applicant to demonstrate whether particular circumstances justify the need for a viability assessment at the application stage.'* Where previously contributions policies were not supported by the planning framework, this suggests a change in the approach which will enable contributions policies to be adopted provided they are established through the local plan process.
41. In addition to this policy change, the CIL Regulations were amended on 1 September 2019.

Removal of Pooling Restrictions

42. The key change to the regulations for the County Council is the removal of Regulation 123. This is the regulation that restricted the way that section 106 and section 278 are used. Previously, Regulation 123 stated that a planning obligation cannot constitute a reason for granting planning permission if it secures funding for infrastructure that is intended to be funded by CIL (infrastructure on a Regulation 123 list) or where there are already 5 or more planning obligations in place (backdated to April 2010). Additionally, section 278 agreements could not be used to secure infrastructure on the Regulation 123 list.
43. The removal of Regulation 123 means that there is no longer any pooling restriction, allowing section 106 contributions to be collected from a number of developments towards the same infrastructure. Indeed, there will no longer be any restrictions on how CIL and section 106 contributions may be spent – they may now be used to fund the same infrastructure.
44. The change to the CIL Regulations and the NPPF enables the County Council to once again negotiate and secure section 106 agreements without restriction, subject to the legal tests which require a planning obligation to be necessary to make the development acceptable in planning terms, directly related to the development, and fairly and reasonably related in scale and kind to the development. Whilst it has tended to rely on section 106 for the larger sites, the CIL regulations made it difficult to secure contributions toward the cumulative impact of smaller developments on transport and education infrastructure in particular.
45. Despite the changes in legislation, some Local Authorities within Hampshire with adopted CIL regimes have been hesitant to deviate from their Regulation 123 lists in the absence of a new replacement local policy or other infrastructure evidence. This has been an issue for the County Council in relation to the negotiation and securing of financial contributions towards school places and has highlighted the complexity of the system whereby the authority collecting funds is not responsible for delivering the infrastructure. Furthermore, since the introduction of CIL by authorities across Hampshire only very limited funds have passed to the County Council, except initially in Winchester, as Table 1 illustrates. Few authorities have a spending policy in place for allocating or transferring funds to the County Council, despite identifying that CIL is to be used to deliver infrastructure that the County Council is responsible for delivering.
46. Whilst government propose to radically overhaul the approach to developer contributions in the Planning for the Future consultation, any change will take some time to implement. It is important in the meantime that the County Council make best use of the existing system to support service delivery. It is therefore recommended that the County Council produces a corporate policy to ensure a sound policy justification for its infrastructure and developer contributions requirements relating to new developments, and enter into discussions with the district and borough councils to have it adopted through their local plan processes. This will enable the County Council to directly secure funding through section 106 for the majority of developments, as it did in the past and

address the current issues of securing the requisite infrastructure funding, especially for school places, where the Local Authority has adopted CIL.

Proposed County Council Policy for Development Related Infrastructure Requirements

47. It is proposed that the County Council develop a detailed policy and guidance document, the content for which would be based on the following principles:

Approach to existing section 106 and CIL regime

1. Setting out the principle of using section 106 to secure necessary County Council infrastructure to mitigate the impact of development. Highlighting that if we identify the need for infrastructure in our planning response, we expect to be party to the agreement so that we can secure the necessary improvements and ensure they are delivered.
2. Setting out the principles and mechanism for working with the Local Planning Authorities to identify schemes which require CIL funding and allocating funds accordingly.

Extra Care and Supported Housing

3. Setting out the quantum of development that would trigger the need for provision on site, the principles for where to locate facilities, and what would need to be secured in the section 106 agreement (standard requirements, model clauses etc).

Public Health

4. Public Health considerations would generally be expected to inform the design, layout and public infrastructure provisions of relevant development proposals, and would be articulated through the County Council's planning responses at all stages of the process. With regard to health care provision and infrastructure, specific provisions where appropriate would be expected to be included within the development proposal and secured through the planning permission or section 106 agreement.

Early Years, School and Further Education

5. Setting out the quantum of development that would trigger the need for provision on site, the principles for where to locate facilities and associated transport considerations, levels of financial contributions, and what

would need to be secured in the section 106 agreement (standard requirements, model clauses etc).

Highways and Transport

6. Identifying what the planning considerations are for highways and transport, levels of financial contributions, links to design principles and commuted sums policies, travel plans, section 106 requirements (standard requirements, model clauses etc), and section 278 and 38 requirements.

Rights of Way and Countryside

7. Identifying what the planning considerations are for countryside and rights of way, levels of financial contributions, links to design principles and commuted sums policies, section 106 requirements (standard requirements, model clauses etc) and section 278 requirements.

Libraries

8. Setting out the quantum of development that would trigger the need for provision, the principles for where to locate facilities as appropriate, levels of financial contributions, and what would need to be secured in the section 106 agreement (standard requirements, model clauses etc).

Waste Management

9. Setting out the quantum of development that would trigger the need for provision on site, the principles for where to locate facilities, levels of financial contributions, and what would need to be secured in the section 106 agreement (standard requirements, model clauses etc).

48. Cabinet is asked to endorse these principles as a basis for the development of the policy.

Monitoring of Planning Obligations

49. The revised CIL Regulations allow local planning authorities to secure the reasonable cost of monitoring the delivery of planning obligations. Previously, case law prevented the County Council from charging for the monitoring of agreements and subsequently any monitoring has been done at the County Council's expense and by individual teams across the authority rather than in a coordinated way.

50. It is therefore recommended that a monitoring fee of £500 per planning obligation, subject to a capped maximum fee of £10,000 per agreement, be introduced as of 1 October 2020 in line with the amended Community Infrastructure Levy Regulations which came into force on 1 September 2019. This fee has been set at a level which will cover the reasonable cost of providing the monitoring of obligations on a corporate basis. It will apply per obligation within a section 106 legal agreement and will be payable on completion of the legal agreement. The monitoring of obligations for all County Council services will be carried out by the Strategic Planning team within the Economy, Transport and Environment Department.
51. A technical note on the monitoring process and how the fee level was set can be found in **Appendix C**. As noted above, the Planning for the Future consultation sets out a potential new approach for funding infrastructure through a levy set nationally, but this may be some time away. The introduction of a monitoring fee would enable the County Council to work most effectively within the current situation.

Annual Infrastructure Funding Statements

52. CIL Charging Authorities will no longer be required to publish a list outlining what infrastructure they intend to spend CIL on. Instead of publishing details of how they intend to use CIL, 'Contribution Receiving Authorities' will be required to publish details of how they have spent CIL and section 106 contributions. These 'Annual Infrastructure Funding Statements' must be published by no later than 31 December each year and must provide details of the projects intended to be funded by CIL, a report on CIL in relation to the previous financial year and a report about planning obligations in relation to the previous financial year.
53. The County Council is a 'Contribution Receiving Authority' by virtue of the fact that it is a local planning authority that secures planning obligations (financial and non-financial). It will therefore be required to publish a report on its website setting out the planning obligations that have been secured, allocated (or remains unallocated) and spent each year, along with details of non-financial obligations secured and delivered each year. The first statement must be published by 31 December 2020.

Conclusions

54. There have been a number of changes to the planning system over the past few years with more radical changes now being proposed. These changes have resulted in local authorities being under increasing pressure to permit housing schemes and ensure that they are deliverable. As such, particularly in light of development viability, requests from the County Council for infrastructure funding or provision are being challenged and scrutinised by both local planning authorities and developers, and it is clear that the provision of adequate and timely infrastructure to accompany development is significantly compromised by the current system and policies and approach of a number of the local planning authorities in Hampshire.

55. The County Council has continued to rely on section 106 agreements to secure planning obligations, albeit in a restricted way as a result of the Community Infrastructure Levy Regulations, because the Community Infrastructure Levy itself is not providing funding for County infrastructure. However, the amendments to the Regulations which came into force on 1 September 2019 will enable the County Council to once again use section 106 agreements for most developments, particularly to mitigate the cumulative impact of smaller developments.
56. In order to provide a sound policy basis for this approach it is recommended that the County Council develop a corporate infrastructure requirements policy, setting out both the infrastructure required for new developments and the level of contributions that would be expected. This will provide both local planning authorities and developers with clear guidance on the County Council's expectations at an early stage in the development process. This would be of benefit under the current or any future developer contributions policy regime.
57. The amended Community Infrastructure Levy Regulations also allow the County Council to start charging for planning obligations monitoring, in order to enable a dedicated resource to be employed to ensure that all of the section 106 agreements are complied with and the associated infrastructure funding is paid when it is required. It is therefore recommended that a fee of £500 per obligation, subject to a capped maximum fee of £10,000 per agreement, be introduced as of 1 October 2020 to carry out this role on a corporate basis.

REQUIRED CORPORATE AND LEGAL INFORMATION:

Links to the Strategic Plan

Hampshire maintains strong and sustainable economic growth and prosperity:	yes
People in Hampshire live safe, healthy and independent lives:	yes
People in Hampshire enjoy a rich and diverse environment:	yes
People in Hampshire enjoy being part of strong, inclusive communities:	yes

Other Significant Links

Links to previous Member decisions:	
<u>Title</u> Major Developments and Infrastructure Funding	<u>Date</u> 11 December 2017
Direct links to specific legislation or Government Directives	
<u>Title</u>	<u>Date</u>

Section 100 D - Local Government Act 1972 - background documents	
<p>The following documents discuss facts or matters on which this report, or an important part of it, is based and have been relied upon to a material extent in the preparation of this report. (NB: the list excludes published works and any documents which disclose exempt or confidential information as defined in the Act.)</p>	
<u>Document</u>	<u>Location</u>
None	

EQUALITIES IMPACT ASSESSMENT:

1. Equality Duty

The County Council has a duty under Section 149 of the Equality Act 2010 ('the Act') to have due regard in the exercise of its functions to the need to:

- Eliminate discrimination, harassment and victimisation and any other conduct prohibited by or under the Act with regard to the protected characteristics as set out in section 4 of the Act (age, disability, gender reassignment, marriage and civil partnership, pregnancy and maternity, race, religion or belief, sex and sexual orientation);
- Advance equality of opportunity between persons who share a relevant protected characteristic within section 149(7) of the Act (age, disability, gender reassignment, pregnancy and maternity, race, religion or belief, sex and sexual orientation) and those who do not share it;
- Foster good relations between persons who share a relevant protected characteristic within section 149(7) of the Act (see above) and persons who do not share it.

Due regard in this context involves having due regard in particular to:

- The need to remove or minimise disadvantages suffered by persons sharing a relevant characteristic connected to that characteristic;
- Take steps to meet the needs of persons sharing a relevant protected characteristic different from the needs of persons who do not share it;
- Encourage persons sharing a relevant protected characteristic to participate in public life or in any other activity which participation by such persons is disproportionately low.

2. Equalities Impact Assessment:

The approach that the County Council is taking to securing development related infrastructure is intended to benefit all communities in Hampshire. It is considered that there will be no additional impact on people with protected characteristics and therefore the strategy has been assessed as having a neutral impact overall.

Appendix A

SUMMARY - Planning for the Future White Paper

Introduction

The Government launched its highly anticipated white paper on planning reforms on

6 August 2020 entitled “Planning for the Future”. The paper sets out long term, regime changing proposals for the planning system in England.

Whilst the government is keen to swiftly move to implement sweeping reforms, it wishes to bring about more immediate changes for the short to medium term and thus a second consultation paper was also published on 6 August entitled ‘Changes to the current Planning System’. This second paper proposes measures that will be introduced to supplement the current planning regime whilst also feeding into the wider reform proposals.

This briefing will focus on the Planning for the Future white paper, the content of which is set out below, with observations from a County Council perspective.

Planning for the Future

The white paper proposes fundamental reforms to the planning system in England by seeking to:

- streamline the planning process with more democracy taking place more effectively at the plan making stage.
- take a radical, digital-first approach to bring about modernisation of the planning process by moving from a process based on documents to a process driven by data.
- bring a new focus on design and sustainability, particularly in the climate change context.
- improve infrastructure delivery in all parts of the country and ensuring developers play their part, through reform of developer contributions.
- ensure more land is available for homes and development and to support renewal of town and city centres.

Specifically, the white paper proposes three Pillars to bring about these reforms:

Pillar 1: Planning for Development

Pillar 2: Planning for Beautiful and Sustainable Places

Pillar 3: Planning for Infrastructure and Connected Places

Pillar 1

This Pillar almost entirely focuses on the changing purpose and structure of Local Plans, making them more standardised, digitised and map led. Site allocations will more definitive and the Plans will identify three types of land; **Growth** (areas

suitable for substantial development), **Renewal** (areas suitable for development in already developed spaces) and **Protected**.

By categorising land as **Growth**, it will then automatically benefit from outline planning permission.

Land that is categorised as **Renewal** will benefit from permission in principle (PiP). A two-stage process for granting final permission is detailed within that paper and based on the existing PiP regime.

Land categorised as **Protected** would include sites currently marked as AONBs, Green Belt, conservation areas etc. but it is noted that the consultation document does not refer to National Parks as a 'Protected' area. Permission is not automatically granted for such sites but will be subject to approval mainly through national policies contained within the National Planning Policy Framework (NPPF).

Local Plans will need to be brought forward within statutory timescales, stated to be 30 months. A noteworthy part about this is that only 6 weeks are identified for engagement with statutory consultees and the public. This may place resource pressure on the County Council to respond in a timely manner. There are also rigid timings on determination of applications with potential financial penalties or automatic approval if these are not met.

From a landowner perspective, which is relevant as 10% of planned housing in Hampshire currently will be on HCC owned land, the 'zoning' approach could potentially sterilise land currently identified as possible development land. The Council may need to become more proactive in promoting sites to avoid compromising existing pipeline projects.

Pillar 2: Planning for Beautiful and Sustainable Places

The National Model design code is to be published in the autumn and will set out more detailed parameters for development such as arrangement, proportions, positioning, hierarchy of public spaces, parking arrangements, placement of street trees and walking and cycling provision. This marks another shift to national control over design standards, but the proposals do indicate that local guides and codes should be prepared wherever possible, as part of or supplemental to Local Plans. It is not clear what involvement consultees such as the County Council might have in this design code process and is an example within the proposals that two tier authorities may be less favoured, aligning with local government re-organisation expectations. As a landowner the County Council could lead the way on pilot projects as part of the 'making beautiful places' initiative.

The proposals to make all streets tree lined will impact on the Council's statutory interests. There is a separate consultation underway relating to England's Tree Strategy.

Pillar 3: Planning for Infrastructure and Connected Spaces

One of the most important proposals and potentially most impactful for the County Council is the proposal to abolish S106 obligations and the CIL regime and replace both with a national Infrastructure Levy (IL). This will be nationally set and based upon a flat rate, value-based charge. This levy would be charged on the final value of a development, to capture some of the uplift in land value brought about because of the permission and would be levied on occupation and not on commencement to assist with affordability and viability for small building companies. The intention is that the levy would be spent locally, although the County Council will not be a collecting authority.

Whilst the detailed working of any such system has yet to be set out, the deferral of payment to the end of construction would seem to go against the principle of up front infrastructure provision, which has been County Council policy, and such an important component of successful major developments in Hampshire, such as Whitehill Bordon. Local Authorities will, however, be able to borrow against future IL payments to forward fund infrastructure.

It is suggested that London Mayoral CIL and similar combined authority CILs could be retained to support strategic infrastructure (an indication that combined authorities are favoured).

All proposals under this pillar result in the removal of s106 obligations because they are seen to be opaque and uncertain. Whilst in principle developer contributions can be removed from the s106 framework, it is unclear how infrastructure itself and other non-financial obligations will be secured if s106 agreements fall away without an appropriate mechanism introduced to replace them.

Issues for the County Council

- The Council has already experienced how difficult it can be to obtain contributions from Local Planning Authorities from CIL receipts. How will the Infrastructure Levy work in the longer term and could/should upper tier authorities be specifically named as collecting authorities if this proposal is followed through?
- Aggregated development in 'Growth' areas may not trigger provision, e.g. new schools.
- Abolition of S106 – these are not only used for financial contributions, but also to secure other infrastructure such as highways works, travel plans, school land etc. This does not seem to have been referenced, and was accepted when CIL was introduced, hence remaining in place.
- Proposal to abolish the Duty to Cooperate – how will this affect the ability to plan strategically across authorities within Hampshire (eg for transport) and also for our own Minerals and Waste Local Plan work?

- Proposal to make sure publicly owned land disposal and public investment in development supports thriving places, such as to support renewal and regeneration of town centres and support the SME and self-build sectors. This appears to add greater burdens to the disposal of public sector land and/or projects. 10% of housing within Hampshire is expected to be on HCC owned land.
- Proposal to speed up the process of Local Plan production (with statutory set timings) but requiring upfront evidence and “best in class” public engagement – this appears to be a conflicting ambition given the time taken to engage with an ever increasing number of stakeholders.
- Proposal to identify all land under one of 3 headings – this feels a blunt instrument in areas of constrained land and limited scale. The available land will be difficult to define in such black and white terms within existing complex urban/rural landscapes. Whilst clarity assists the process, the proposed approach does not appear sufficiently sophisticated to consider and retain the quality and diversity of places across Hampshire. The current system of having (restricted) Countryside designations, (permissive) Urban Settlement Boundaries and new Local Plan allocations assessed via Sustainability Appraisals has enabled this to be suitably resolved within the current system.
- Where land is designated under Growth or Renewal, how will the County Council engage as landowner or infrastructure provider if permission is automatically granted? Delivering the right infrastructure at the right time in the right place is essential through the master planning of the development. This requires the joined up working of the LPA, developer, and infrastructure providers working together before permission is granted.
- Will the introduction of the proposed IL and any transitional arrangements cause uncertainty and delay Local Plans progress until the new system comes into play, resulting in a disruption to the flow of sites and related housing delivery?

END

Appendix B - Potential implications for housing requirements across Hampshire

Local authority	Current Standard Method (dpa)	Proposed New Standard Method (dpa)
Basingstoke	884	684
East Hampshire	623	932
Eastleigh	694	885
Fareham	514	403
Gosport	344 ¹	309
Hart	286	512
Havant	504	963
New Forest	785 ²	782
Portsmouth	854 ³	730
Rushmoor	260	401
Southampton	1002	832
Test Valley	550	813
Winchester	692	1025
Hampshire	7992	9271

Sources: [Lichfields](#), [RPS](#), PFSH (draft report on revisions/updates to Statement of Common Ground due to be reported to PFSH Joint Committee on 30 September 2020). These figures are subject to change.

¹ As stated in emerging PFSH Statement of Common Ground. RPS & Lichfield indicate a figure of 238

² As stated in emerging PFSH Statement of Common Ground. RPS provides a figure of 274, Lichfield states 729.

³ As stated in emerging PFSH Statement of Common Ground. RPS & Lichfield indicate a figure of 855.

Appendix C

Technical Note on the Monitoring of Planning Obligations

Background

1. Amended Community Infrastructure Levy (CIL) Regulations came into force on 1 September 2019 which confirm that a local planning authority may now lawfully charge a fee for monitoring planning obligations, provided it is fairly and reasonably related in scale and kind to the development and does not exceed the authority's estimate of its cost of monitoring the development over the lifetime of the related planning obligations.
2. The County Council primarily enters into section 106 agreements as Local Highway Authority (including in relation to Public Rights of Way); Local Education Authority; Adult Services Provider; and in respect of Countryside Services.
3. There is currently no coordinated process for the monitoring of section 106 agreements on behalf of the County Council. Any monitoring that takes place is done by individual teams across the organisation, and at the County Council's own expense.
4. The change in the CIL Regulations provides an opportunity for the County Council to introduce a planning obligations monitoring fee, put in place appropriate resources to proactively monitor agreements and ensure compliance with the obligations and payment of all financial contributions at the appropriate time.
5. The National Planning Practice Guidance states that 'fees could be a fixed percentage of the total value of the section 106 agreement or individual obligation; or could be a fixed monetary amount per agreement obligation (for example, for in-kind contributions). Authorities may decide to set fees using other methods. However, in all cases, monitoring fees must be proportionate and reasonable and reflect the actual cost of monitoring. Authorities could consider setting a cap to ensure that any fees are not excessive.' A benchmarking review to consider what other local authorities are charging for monitoring of planning obligations highlighted a varied approach to this process in line with this guidance.
6. Most of the local planning authorities will also be seeking to introduce a monitoring fee for planning obligations and therefore it is important that, in addition to making sure the fee is proportionate and reasonable, the fee is set at a level that is not likely to significantly impact developers and therefore give rise to challenge. The County Council will only be charging a fee to monitor the obligations that it has specifically entered into, and not for those elements that another Local Planning Authority could charge a monitoring fee for. That will avoid any double counting of monitoring fees.

What does the monitoring of planning obligations involve?

7. The monitoring of financial obligations will involve:
 - a. recording the details of the section 106 agreement on an IT system;
 - b. highlighting the triggers for the obligations contained within the agreement;
 - c. monitoring the progress of the development in order to identify when obligations are due; and
 - d. invoicing for financial contributions (including any indexation) and ensuring they are paid at the appropriate time.
8. With respect to non-financial contributions, the monitoring proposed is expected to provide a framework within which colleagues across the organisation are notified when triggers are approaching in order that they can ensure that the obligations are complied with.

Setting the fee

9. In order to establish the reasonable cost of monitoring each planning obligation, an estimate was made of how many section 106 planning agreements the County Council enters into each year and how many obligations each agreement is likely to contain.
10. Data from legal services suggests that over the past 5 years the County Council has entered into an average of 86 section 106 agreements per year.
11. The Ministry for Housing Communities and Local Government carried out research into the incidence and value of planning obligations in March 2018 which suggested that the average number of planning obligations contained within a section 106 agreement is 2.56. This figure has been used in order to provide a robust assessment however it should be noted that Hampshire County Council is typically party to more complex legal agreements and therefore average number of obligations is likely to be more than this.
12. Based on the number of agreements and obligations expected to need monitoring per annum initially it is suggested that 1 Full Time Equivalent (FTE) post at an F grade be established to carry out the role.
13. Using this information the Economy, Transport and Environment charging calculator model was used to establish the likely cost of providing the monitoring service per annum, as set out in Table 1:

Table 1: Cost of carrying out the monitoring of planning obligations

Team	Grade	FTE	% Time Spent on Activity	Chargeable Days	Chargeable Hours	Cost
Senior Project Officer	F	1	100	213.70	1581.38	£83,313
Manager	G	1	10	21.37	158.14	£10,121
Grandparent Manager	I	1	2	4.23	31.33	£2,820
Other costs (IT etc.)						£10,000
Total						£106,254
Cost per transaction (2019/20) (based on 86 agreements per year)						£1,235.51
Cost per obligation (2019/20) (based on 2.56 obligations per transaction)						£482.62

14. This calculator suggests that the cost of monitoring each obligation amounts to £482.62 and therefore it is proposed that the fee be set at £500 per obligation initially, and subject to review after the first 12 months.
15. A benchmarking exercise has been carried out to compare this proposed fee level with other authorities currently charging a monitoring fee. Some authorities use a percentage of the value of the obligations to determine the fee (typically 5%), however this was discounted due to the significant value of the infrastructure that the County Council secures which would make the fee disproportionate to the monitoring required. Compared to those authorities that have set a fixed fee, the County Council proposed fee of £500 is considered comparable. A cap will be applied so that the maximum fee associated with any one agreement will be set at £10,000. Details of what other authorities charge can be found in Table 2.

Table 2: Benchmarking Planning Obligation Monitoring Fees

Authority	Non-Financial	Financial	Comments
Havant Borough Council	£693 per non-financial head of term	5% of cost per financial head of term	Monitoring fee capped at a max of £10,000 per application
South Downs National Park	£440 per eligible covenant	£440 per eligible covenant	Exemptions apply

Scarborough Borough Council	£500 per obligation	5% of all obligations up to £100,000 Fixed charge £250 - levied where the total is less than £5,000	Plus, an additional 2.5% of any amount exceeding £100,000
Plymouth City Council	£667 per obligation	£667 per obligation	First £1,000 to be paid on completion of the agreement. Payment should be made at signing. The remainder is normally due on commencement of works, however further trigger points may be agreed.
Guildford Borough Council	£750 per payment trigger	£750 per payment trigger	Increasing fee to £750 per payment trigger from 1 October 2019
Norfolk County Council	£500 per obligation on all schemes involving the phasing of payments.	£500 per obligation on all schemes involving the phasing of payments.	<i>Planning Obligations Standard September 2019</i> On more complex sites the charge will be levied at a rate of 1% of the County Council's total obligations up to a max of £10,000 per agreement.
Cambridge City Council	The management and administration charge will be 5% of the total contribution(s) (subject to a maximum charge of £50,000).	The management and administration charge will be 5% of the total contribution(s) (subject to a maximum charge of £50,000).	Large sites - To be considered on a case by case basis. May be agreed by negotiation, subject to an additional management and administration charge. The default position for administration charge will be 5% of total contribution(s).
Mid Sussex District Council	For developments up to 15 dwellings - £150 per obligation For larger developments between 16 and 100 dwellings, and including commercial developments - £450 per obligation For very large developments over 100 dwellings - £500		The 2019/2020 fees for monitoring planning obligations are as follows:

	per obligation. Where an obligation is based on triggers, the fee will be £500 per trigger.		
Essex County Council	Where a contribution is taken via agreement, up to 2% (to a maximum of £2,000) of each appropriate amount may at the discretion of the County Council be expended for the purpose of monitoring compliance with the agreement.	Where a contribution is taken via agreement, up to 2% (to a maximum of £2,000) of each appropriate amount may at the discretion of the County Council be expended for the purpose of monitoring compliance with the agreement.	The Essex County Council Developers' Guide to Infrastructure Contributions Updated 2016

Conclusion

16. In order for the County Council to commence monitoring planning obligations in a coordinated and proactive way, it is proposed to introduce a fee of £500 per each planning obligation contained within a section 106 agreement, subject to a capped maximum fee of £10,000 per agreement. This fee will be introduced as of 1 October 2020 for all agreements that the County Council enter into which contain planning obligations.

