MINISTRY OF HOUSING, COMMUNITIES & LOCAL GOVERNMENT OPEN CONSULTATION 'PLANNING FOR THE FUTURE'

WOMBLE BOND DICKINSON LLP RESPONSE

Consultation closing date: 29 October 2020

Responses to be sent to: planningforthefuture@communities.gov.uk.

About Womble Bond Dickinson (UK) LLP

This response is submitted by and on behalf of Womble Bond Dickinson (UK) LLP.

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Introduction

WBD's response addresses a selection of the questions for consultation set out in the White Paper. The proposal and question are repeated for convenience and WBD's response is set out immediately below the relevant question.

Pillar 1: planning for development

3. Our proposals will make it much easier to access plans and contribute your views to planning decisions. How would you like to find out about plans and planning proposals in the future? [Social media / Online news / Newspaper / By post / Other – please specify]

The most recent ONS data appears to show a very high percentage of internet access for households and individuals; Internet access – households and individuals, Great Britain: 2020. Social media and online news plays a very important role today and is already being employed by some developers and promoters, as an additional means of consultation.
WBD believe careful consideration would need to be given to how the consultation process is communicated to the relevant community, it is important that the public are made aware that they should check social media and it should be remembered that not everyone may have the means to do so. That is not to say that social media and online response may not be aneffective way to publicise and consult on proposals.

5. Do you agree that Local Plans should be simplified in line with our proposals?

Not sure.

WBD is unsure that it is realistic or feasible to categorise "all areas of land" into one of the three proposed types in the timescale proposed for the new local plans and there remain considerable uncertainties around the details of the process for doing so. For example, the proposal suggests that existing urban areas would most likely fall into the renewal areas and conservation areas into protected areas. Conservation areas may often be found in the historic core of urban areas, e.g. Bristol and Newcastle. It is not clear how appropriate redevelopment in these cities that sympathetically respects the built heritage and delivers real change would fit into one of the three categories proposed.

WBD notes that certain types of development are by their very nature restricted as to where they can come forward, e.g. wind farms and mineral extraction sites, and may well need to come forward in or near to protected areas. This needs to be taken into consideration when designating land, particularly in the countryside.

WBD is unclear if the proposal would be implemented as a revision to the existing process for local planning authority site allocation, which includes consultation, or whether a new process is proposed? Without understanding the proposed allocation process (and how community engagement/consultation will be achieved), it is difficult to comment further.

Attempts to bring forward Joint Spatial Plans including strategic development locations are illustrative of the length and complexity of the process that may be expected to arise if the preparation of local plans is front loaded to the extent that the allocations grant outline consent, as anticipated by the White Paper's proposals.

WBD notes that under the Planning Act 2008 regime the examination process for Development Consent Orders (DCOs) runs to a strict statutory timescale. This process for examining applications for large infrastructure projects has proven itself as very effective; in particular the pre-application engagement methods and the clear structure of examinations are central to the ability to handle complexity in the DCO process. Perhaps aspects of the DCO examination process could be scaled up, or applied differently to address the challenges and timescales involved with the new proposed local plans and designations in a way that is commensurate to the complexities involved. For more information please see our report 'National Infrastructure Development Planning Review: Can development consent orders help meet the challenges of our time?'

WBD's research highlights the DCO process's ability to balance scrutiny of proposals with a committed timetable for decision making is its most widely appreciated strength. These 'certainty principles' are integral to the effectiveness and success of the DCO regime over a decade of delivery since its creation in 2008. The clarity and certainty of the DCO process timetable ensures that projects can move from planning into construction and operation quickly and seamlessly because the fixed DCO decision-making timetable enables applicants to accurately forward plan for construction and operation.

The research also considers the role the DCO process could have in new settlements by preparing a National Settlements Strategy, which identifies broad parts of the country suitable for new settlements/large scale developments with the DCO process incorporated as a consenting model but with different consenting and delivery models to be applied. In our view the DCO model presents an ideal mechanism for ensuring the right infrastructure can be delivered in the rights places in readiness for or alongside future development.

Proposal 2: Development management policies established at national scale and an altered role for Local Plans

6. Do you agree with our proposals for streamlining the development management content of Local Plans, and setting out general development management policies nationally?

Yes.

WBD would welcome reforms which increase the legibility and clarity of local plans and policies. WBD agrees that the NPPF should become the primary source of policies for development management, particularly where there is a clear requirement for consistency with national policy.

WBD would also support retaining some flexibility to set development management policies for local authorities. WBD agrees that some standardisation and rationalisation in the inclusion of development management policies would be beneficial.

Local circumstances where departure from national development management policy may be justified can perhaps not be entirely ruled out and in such circumstances the relevant local planning authority should perhaps be required to provide justification.

WBD does not understand how development proposals will be able to demonstrate compliance with planning policy using automatic machine readable technology.

Proposal 3: Local Plans should be subject to a single statutory "sustainable development" test, replacing the existing tests of soundness

7(a). Do you agree with our proposals to replace existing legal and policy tests for Local Plans with a consolidated test of "sustainable development", which would include consideration of environmental impact?

Not sure.

A simplification for establishing a plan's acceptability is welcome, but the proposals are currently unclear on the assessment of the soundness of a plan. Sustainability appraisals are important in establishing not just the environmental but social and economic acceptability of a plan. Without a proposed definition for the sustainability test it is difficult to comment further.

With the White Paper's strong focus on housing, it is important not to lose sight that sustainable growth also requires employment provision. Binding housing targets perhaps offer the prospect of reducing the amount of time allocated to examining housing matters, but there should be no erosion of employment land supply to meet such targets.

7(b). How could strategic, cross-boundary issues be best planned for in the absence of a formal Duty to Cooperate?

WBD understand that the White Paper's proposals will in practice result in a significant removal of local discretion, but the paper does not propose a definite method or solution for effective planning at geographies above local planning authority (LPA) level. WBD does not understand how, without the duty to cooperate, severely constrained LPAs will have their housing need redistributed.

The duty to cooperate, introduced under the Localism Act 2011, was supposed to address the issue of how to get LPAs to engage with one another on e.g. the question of housing. However, the duty was arguably insufficient from inception; local authorities are required to cooperate with one another on cross-boundary issues, and face having their local plans found to be unsound by inspectors, leading to considerable delays in bringing forward a plan if the duty is not complied with. But in practice the duty is not a requirement to agree, merely to show evidence of cooperation and there are few judicial decisions. Without a requirement that local authorities reach agreement, the duty would always fall short of achieving the ultimate aim of getting LPAs to meet housing need.

If a requirement to agree is not the answer, then it may be that an alternative means of tackling the problem may lie with the government's devolution agenda. Without knowing what will be proposed in the promised 'devolution and local recovery white paper', there may be the potential for authorities to agree an alternative distribution of their requirement in the context of joint planning arrangements e.g. spatial development strategies overseen by e.g. mayors of combined authorities.

WBD notes that sub-national transport bodies such as Transport for the North have been effective in developing strategies for transport improvements across their area, and this could be considered for extension to other areas, both geographical and sectoral.

A streamlined development management process with automatic planning permission for schemes in line with plans

Proposal 5: Areas identified as Growth areas (suitable for substantial development) would automatically be granted outline planning permission for the principle of development, while automatic approvals would also be available for pre-established development types in other areas suitable for building.

9(a). Do you agree that there should be automatic outline permission for areas for substantial development (Growth areas) with faster routes for detailed consent?

Not sure.

There is very limited information as to how this process is to work in practice, but WBD welcomes that 'substantial' would be defined.

There is some lack of clarity in the White Paper on whether the consent route would be something like a permission in principle or outline planning permission. This needs to be clarified and without further information on the proposed reformed reserved matters process it is difficult to comment.

Prior to outline permission being granted under current legislation, there is a need where necessary for additional assessments to be undertaken e.g. flood risk, noise, contamination, archaeology, and transport etc. to understand the site specific constraints.

Under the proposal, would the automatic permission be on the basis the applicant/developer will undertake the additional assessments, or is this the role of the local planning authority (LPA) prior to local plan allocation? WBD anticipates that if it falls to the LPA then this would have a significant impact in terms of resources before the land is allocated and draw out the new local plan process.

There is also no information on how the proposed approach would protect against inappropriate adjacent development and WBD believes that this would need further consideration, such that there should still be scope for an LPA to reject specific applications within the overall consent.

WBD agrees that beyond infrastructure there is a lack of choice of consenting mechanisms for investors and developers through which to build out large-scale developments, quickly and sustainably. The potential for lessons to be drawn from the Development Consent Order (DCO) process is considered in WBD's report already referred to in answer to question 5 above: 'National Infrastructure Development Planning Review: Can development consent orders help meet the challenges of our time?' This research highlights that the clarity and certainty of the DCO process timetable ensures that infrastructure projects can move from planning into construction and operation quickly and seamlessly because the fixed DCO decision-making timetable enables applicants to accurately forward plan for construction and operation. The research considers the role the DCO process could have in new settlements by preparing a National Settlements Strategy which identifies broad parts of the country suitable for new settlements/large scale developments. Consultation and engagement is key to the DCO process which also empowers LPAs to participate fully and effectively through the pre-application, examination, and post-consent stages.

If the proposal for a National Settlements Strategy is not acceptable then to provide the necessary choice and certainty for developers and investors, perhaps gateways could be introduced by way of guidance (once DCOs are added to the mix for consenting substantial development in legislation) as follows:

1. Where a relevant LPA or LPAs agree that a settlement or other substantial development could be delivered through a modified DCO system with the necessary compulsory purchase powers (no scheme world) thus relieving public sector (including Homes England) funding and resourcing, and utilising private sector capital. As public sector debt has ballooned due to the pandemic, this may be an attractive means to transfer risk and cost.

2. Where there is Local Plan failure which has been well documented in recent years. The proposed new local plan proposals may go some way to avoiding such failure but the need for sustainable and zero carbon development is critical and the new local plan system unfortunately untested, unlike the Planning Act 2008 powers.

3. Complex schemes where there are difficulties in infrastructure delivery or complex land assembly issues. At present only settled large estates benefit from the promotion of development over decades through the local plan system. The DCO system, with CPO powers to ensure more land value capture to provide the necessary infrastructure and affordable housing, may be an attractive alternative to deliver complex schemes in a timely manner.

9(b). Do you agree with our proposals above for the consent arrangements for Renewal and Protected areas?

Not sure.

Without more detail WBD is not sure. WBD anticipates that the proposals would need significant resource given to local planning authorities as well as a change in skills from current practice for all three suggestions. Without this resource, WBD would not be optimistic that the proposals will be realised.

WBD support the mechanism of Local Development Orders, but again these are resource intensive and land owners need to be fully engaged.

9(c). Do you think there is a case for allowing new settlements to be brought forward under the Nationally Significant Infrastructure Projects (NSIP) regime?

Yes.

There was an acknowledgement that there was a case for allowing development consent to be obtained for housing which is related to a NSIP (in England) under the 2008 Act with the changes to the Planning Act 2008 made by section 160 of the Housing and Planning Act 2016.

To ensure that the increased flexibility being provided did not undermine the local planning process and the wider responsibilities for local authorities to plan for housing needs in their area, a general maximum amount of housing was applied: 500 dwellings. In assessing any proposals for housing in locations where development should be restricted (e.g. designated sites, locations at risk of flooding etc.) the Examining Authority (during the examination of the application for development consent) and the Secretary of State (when reaching a decision on the application) would assess the housing element, including the appropriateness of the amount of housing being sought, against the relevant policies set out in the NPPF and the local development plan.

WBD notes that the Planning Act 2008 regime provides significant opportunity for local participation in the examination process. It also provides local authorities with the opportunity to submit a local impact report which sets out the likely impact of the development covered by an application for development consent. Local impact reports are valuable documents that ensure the Examining Authority is aware of the local impacts of development for which development consent is sought and so will assist in the overall examination of an application. The Secretary of State is also required to have regard to any local impact report when deciding whether to grant development consent. Local authorities are strongly encouraged to submit a local impact report and to ensure that it covers any specific impacts arising from the housing. It is also open to the Examining Authority to request any information from a local authority that they may consider necessary (e.g., in relation to the impacts on local housing

markets and supply).

Currently, housing is only capable of being consented if it is linked (either by a functional need or by geographical proximity) to an infrastructure project that itself requires development consent, but such a project may also include other development associated with that housing, such as local infrastructure. WBD is not aware of any DCO project to date which has used the power to include an element of housing.

WBD considers that there needs to be an overarching national framework that drives the identification of places for development at the scale of new settlements, where infrastructure is an integral part, and the mechanisms available for delivery.

WBD also notes that there is precedent for NSIP applications coming forward, being examined and consented in the absence of an applicable National Policy Statement (NPS). However as set out in WBD's report already referred to above, 'National Infrastructure Development Planning Review: Can development consent orders help meet the challenges of our time?', (July 2020), WBD's research recommends that further consideration is given to a National Settlements Strategy which identifies broad parts of the country suitable for new settlements/large scale developments. WBD believes the Government should look to explore the extension of the DCO process for new settlements and other complex developments by preparing a National Settlements Strategy (NSS) that:

- Identifies broad parts of the country suitable for new settlements / large scale developments (developed under DCO engagement principles with input from Local Authorities and devolved administrations);
- Enables different consenting and delivery models to be applied; Incorporates the DCO as a consenting model;
- Is drafted to provide the national needs case that gives certainty, to unlock significant financial investment from the UK and internationally; and
- Is developed to give the NSS equivalence with the National Policy Statements.

A NSS strategy would also be able to address considerations such delivery of infrastructure, e.g. transport and social e.g. schools and hospitals.

WBD suggests a number of further changes would also need to be considered including:

- Adding to the list of statutory consultees those relevant to housing e.g. Homes England.
- Review of the list of application documents to add any housing specific ones.

Please also see our response to Question 9 (a).

Proposal 6: Decision-making should be faster and more certain, with firm deadlines, and make greater use of digital technology

10. Do you agree with our proposals to make decision-making faster and more certain?

Not sure without more detail.

WBD agree in principle with developers knowing whether a development is going to be supported or not, as it provides certainty and could facilitate timely provision of appropriate infrastructure.

WBD would anticipate that having machine readable plans will discriminate against many applicants who draw their own plans and which are not likely to meet the standards required for machine legibility.

Detail is not provided regarding the digital template for planning notices. Whilst press notices may be somewhat obsolete, many people nevertheless still engage in the system as a result of site notices and/or neighbour letters.

The amount of information indicated that would need to be supplied for major developments, indicates that these would come forward as a result of being defined within a growth area. It follows that supplying the necessary information in relation to considerations e.g. flood risk, contamination etc. may be a challenge within the 50 page limit.

The section for major developments coming forward as a result of being allocated appears to suggest the assessments, flooding, drainage, noise, contamination etc. will have been undertaken by the planning authority prior to allocation? If this is correct then it will significantly increase the pressure on the proposals to shorten the local plan process. WBD anticipates that few local planning authorities will have the necessary expertise in house and procuring of the necessary expertise will be a significant expense for authorities.

WBD anticipates that automatic approval of applications, where not determined within certain timescales, may lead to a greater number of refusals if negotiation is required in order to make the development acceptable. If correct, this would ultimately lead to a longer period for development to come forward.

A new interactive, web-based map standard for planning documents

Proposal 7: Local Plans should be visual and map-based, standardised, based on the latest digital technology, and supported by a new template.

11. Do you agree with our proposals for accessible, web-based Local Plans?

Yes.

But WBD notes the need to ensure that any proposals do not exclude those that do not have access to digital services.

A streamlined, more engaging plan-making process

Proposal 8: Local authorities and the Planning Inspectorate will be required through legislation to meet a statutory timetable for key stages of the process, and we will consider what sanctions there would be for those who fail to do so.

12. Do you agree with our proposals for a 30 month statutory timescale for the production of Local Plans?

Yes, in principle.

The proposal is for new local plans to be in place by the end of this Parliament (Spring 2024).

Given that under the new proposed system, local plan processes should take no more than 30 months to be put in place, the necessary primary legislation will need to have been passed and in force, with any necessary accompanying Regulations and guidance, by Autumn 2021. WBD views this as an ambitious timescale, especially as Government would need to also implement any policy changes, including to set a new housing requirement, by updating the NPPF in line with the new legislation.

WBD considers the proposed timescale to be extremely challenging, given the need to prepare design codes, masterplans for large sites, a reduced but not insignificant evidence base, and front load elements which allow for permission in principle. Where authorities have strategic cross boundary issues to address then the proposals may be unrealistically optimistic.

WBD does not believe it will be beneficial to remove the ability for the local planning authority to amend the draft plan in response to consultation; WBD believes it would make the examination more difficult and question if it would constitute proper consultation.

While a word limit on consultation responses may appear initially attractive, WBD thinks it likely to be unnecessarily restrictive.

Proposal 9: Neighbourhood Plans should be retained as an important means of community input, and we will support communities to make better use of digital tools

13(a). Do you agree that Neighbourhood Plans should be retained in the reformed planning system?

Not sure.

The way the new system is proposed attempts to nationalise and standardise as many elements as possible. This makes it hard to see how neighbourhood plans will fit within the proposed process and that the role of neighbourhood plans will not be circumscribed to e.g. introducing local design codes.

13(b). How can the neighbourhood planning process be developed to meet our objectives, such as in the use of digital tools and reflecting community preferences about design?

Not sure.

The neighbourhood planning process is voluntary, reliant on grant funding and local planning authorities to assist with technical aspects of the work. Developing design codes could be a costly exercise. Given that 'growth' areas in the new system will grant permission in principle this could be a potentially costly (and not quick), way to ensure that an allocation is appropriate.

Speeding up the delivery of development

Proposal 10: A stronger emphasis on build out through planning

14. Do you agree there should be a stronger emphasis on the build out of developments? And if so, what further measures would you support?

Yes.

Please see our response to questions 9 (a) and (c) and how the DCO system provides for the delivery of development rather than just the consenting.

Pillar 3: planning for infrastructure and connected places

21. When new development happens in your area, what is your priority for what comes with it?

[More affordable housing / More or better infrastructure (such as transport, schools, health provision) / Design of new buildings / More shops and/or employment space / Green space / Don't know / Other – please specify]

The National Planning Policy Framework (NPPF) makes it clear that local planning authorities may consider whether impacts of a proposed development could be made acceptable through the use of conditions or a planning obligation. Planning obligations must only be sought where they meet all of the relevant statutory tests (Regulation 122(2) of the Community Infrastructure Levy Regulations 2010 (as amended)). Contributions, whatever form they take, must therefore only be sought if they address those matters directly related to a specific site. The priority for what is delivered with new development is therefore properly development specific and will vary from one development to another.

This being the legal position, it is acknowledged that there is a widespread perception and acknowledgement by Government that infrastructure needed to support new development needs to be provided first, i.e. that key infrastructure, including roads, schools and GP surgeries, comes before people move into new homes (e.g. First Homes consultation). Nevertheless the individual requirements of each development will be site specific.

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

22(a). Should the government replace the Community Infrastructure Levy and Section 106 planning obligations with a new consolidated Infrastructure Levy, which is charged as a fixed proportion of development value above a set threshold?

Not sure.

WBD is of the view that a nationally set market value based threshold may dis-incentivise development because WBD anticipates that it could in many areas lead to viability issues in many instances. However, at a combined authority, county or unitary council level (but set low), it could perhaps work, e.g. mayoral infrastructure levies have proved relatively successful where adopted because they have been kept low and focused on specific infrastructure delivery.

The White Paper acknowledges this by stating, *"in areas where land value uplift is insufficient to support significant levels of land value capture, some or all of the value generated by the development would be below the threshold, and so not subject to the levy."* This point is also raised by the Community Infrastructure Levy (CIL) Review Group report, but the Review Group to not propose abolition of section 106 agreements; on the contrary, they suggest that they should be retained and that is also our view although WBD accepts that the White Paper proposals are not completely abolishing section 106 agreements, just the monetary element of such agreements.

Section 106 agreements currently exist in a scaled back form where they are necessary to make a specific development acceptable in planning terms; directly related to the development; and fairly and reasonably relate in scale and kind to the development. They exist to address those matters that are directly related to a specific site and not new or improved infrastructure serving the wider area and intended to be delivered by the local authority using CIL payments.

A value based infrastructure levy as is proposed is essentially a financing tool as opposed to a delivery tool. If, section 106 agreements are completely removed, the difficulty then arises: what mechanism will exist to address development specific impacts and non-financial requirements? For example, WBD notes that DEFRA has very recently confirmed that the Government will be proceeding with the Environment Bill. This (if enacted) would mandate net gain in biodiversity through the planning system, requiring a 10% increase in biodiversity after development, compared to the level of biodiversity prior to the development taking place and would put on a statutory footing compensatory habitat creation with a 30 year maintenance requirement. It is currently unclear how it is intended that the 30 year requirement would be implemented. The Planning White Paper contains securing net gains for biodiversity as a key ambition and WBD believes section 106 agreements provide the correct mechanism to deliver the 30 year management plans.

WBD also anticipates that the proposed timing (levied at the point of occupation), will create uncertainty and delay. It would create uncertainty for developers regarding the amount of money they will be required to pay (exacerbated in times of market volatility), which could impact and affect a scheme's funding. WBD also anticipates that delaying levy receipts to the point of occupation will delay the provision of infrastructure. It would also transfer funding risk (e.g. developer insolvency) and cost of funding to local authorities and it is a potentially volatile source of funds given that it is reliant on development value. WBD queries whether this is really desirable from a public policy perspective?

The CIL liability is calculated at permission stage and falls due at commencement of development. At its inception and throughout subsequent Government consultations on improving amendments, an understanding is evidenced that the CIL provides 'up front' certainty about the sum of the liability and how this will contribute towards identified infrastructure. Such 'upfront certainty' is generally welcomed in the development sector. Introducing a levy which is based on final value does not provide this kind of 'upfront certainty'.

The current system of section 106 agreements enables negotiation to take place to ensure that community benefits are secured alongside consideration of viability. The Review Group also received a lot of evidence that local authorities are happy with section 106 agreements. Precisely because section 106 agreements are such a flexible and necessary tool, this mechanism has remained. Removing section 106 agreements would also be removing the link between a development and its impacts and the ability to control some of the more incidental items that may require funding as well as non-financial impacts. There would need to be some form of replacement mechanism if section 106 agreements were to be abolished.

WBD notes that it is also common for Nationally Significant Infrastructure Projects (NSIPs) under the Planning Act 2008 to provide section 106 agreements to commit the project promoter to making contributions to local planning authorities for particular purposes that will reduce the impacts of the particular project. If instead a project merely paid a fixed amount to a general fund, there is no guarantee that it would offset any particular adverse impact it might cause. A tariff based on floor space is likely to be difficult to calculate for many types of infrastructure as was illustrated when the CIL was first introduced and there was a debate over whether wind farms would be liable.

To address the perception that section 106 agreements are a source of delay and negotiations time-consuming, a number of minor but not insignificant reforms for section 106 could be considered:

- an updated standard template; and
- stronger guidance that section 106 agreements must be well advanced before schemes go to committee.
- Planning application fees should incorporate a funding element to secure section 106 agreements where they are necessary.

WBD notes that a number of the findings of research are still very relevant today ('The Nature of Planning Constraints', Report to the House of Commons Communities and Local Government Committee. Cambridge Centre for Housing and Planning Research, March 2014), e.g. that local planning authorities which meet their targets: a) generally required the section 106 to be agreed before an application would be considered; and b) had a policy that section 106 matters should be settled before going to committee.

Many issues which are covered in section 106 agreements are driven by local development management policies. WBD notes that elsewhere in the White Paper there are proposals to streamline and standardise at a national level development management policies, a proposal which WBD supports. If that occurs then that may have the effect of also speeding up section 106 negotiations.

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

The experience of community infrastructure levy setting has shown that even within a single local authority area different levels of viability exists.

WBD anticipates that setting rates would require a detailed consideration of local viability and viability of different assets. WBD does not believe that a nationally set rate (either single or area specific) would be able to adequately reflect local viability; further a single rate would incentivise development in the South/South-East and East of England where land values are higher, but limit development in areas like the North East. While it is a valuation question, WBD remains sceptical that a single rate (or set of area rates) would be able to be set at a level high enough to achieve the Government's indicated ambition to collect increased receipts, whilst remaining viable throughout the country.

22(c). Should the Infrastructure Levy aim to capture the same amount of value overall, or more value, to support greater investment in infrastructure, affordable housing and local communities?

WBD believe that any levy should aim to raise the amount of contribution required to deliver the necessary infrastructure to support new development, no more and no less. For growth areas in particular, once these are allocated, it would be sensible to prepare detailed infrastructure plans so the local authorities know what needs to be delivered where and what funding is required.

22(d). Should we allow local authorities to borrow against the Infrastructure Levy, to support infrastructure delivery in their area?

If the liability to pay the proposed levy is point of occupation as proposed, then on a practical level local authorities will need to be able to forward-fund necessary infrastructure, but please see our additional comments under Question 22(a), above, particularly if it is desirable from a public policy perspective to transfer the cost of funding and funding risk to the local authority for development specific infrastructure.

Proposal 20: The scope of the Infrastructure Levy could be extended to capture changes of use through permitted development rights

23. Do you agree that the scope of the reformed Infrastructure Levy should capture changes of use through permitted development rights?

Not sure.

WBD anticipate that it would add considerable work and increase the resource need for local authorities to administer and may in practice prove a dis-incentive to conversions coming forward.

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

24(a). Do you agree that we should aim to secure at least the same amount of affordable housing under the Infrastructure Levy, and as much on-site affordable provision, as at present?

WBD do not agree that the proposed infrastructure levy should deliver affordable housing provision. It is also our view that including the affordable housing contribution within the levy would make the setting of a national value based levy rate very difficult.

It is our view that any affordable housing contribution should seek to secure the identified local need and should require onsite provision in all but exceptional circumstances. The section 106 agreement mechanism remains the most flexible delivery vehicle.

In this context WBD notes the Government's acknowledgement, in its response to the First Homes consultation published on 6 August 2020, that legislation can be restrictive and limit the ability of local planning authorities to accommodate for local needs and that it will begin by making planning policy changes through the NPPF and guidance.

In practice, section 106 negotiations may be a source of delay. In our experience, straightforward monetary contributions rarely cause protracted delays. However, site specific mitigation measures and differences over related local and central government policy are more frequently the cause of

longer delays and protracted negotiations.

Delays in section 106 negotiations are also caused by an absence of detailed heads of terms e.g. the type and scale of the contribution, why it is required, and time for compliance. Further lack of resources within the authority legal team and other teams are also a common reason for delays. Efficiency and quality are more often related to technical and managerial skills and resources. WBD recommends that a much greater emphasis is directed to support local planning authorities.

As already referred to above, many issues which are covered in section 106 agreements are driven by local development management policies. WBD notes that under Pillar 1 there are proposals to streamline and standardise at a national level development management policies, a proposal which WBD supports. If that occurs then that may also have the effect of reducing some delays arising out of policy conflicts.

Negotiations on complex section 106 agreements can be long and protracted which will have the effect of slowing down the delivery of development. WBD supports the Government in considering to how this might be improved. However, many local authorities have effective mechanisms and WBD would encourage Government to look to the good practice of these authorities before bringing in more stringent rules. In this context WBD would support strong guidance on completion of section 106 negotiations, expectations of pre-application engagement, front-loading of discussions, greater use of standardised clauses, and set expectations for greater transparency e.g. by mandating placing of section 106 agreements on the planning register.

24(b). Should affordable housing be secured as in-kind payment towards the Infrastructure Levy, or as a 'right to purchase' at discounted rates for local authorities?

Circumstances do arise where it is sensible for a developer to provide infrastructure either as well as land or instead of land. For instance, it may be a priority for an authority to ensure the delivery of certain on-site or off-site infrastructure to bring forward a particular development. Where this is the case, the developer may be best placed to deliver that infrastructure in a timely and cost effective way.

It is our view that the ability to provide contributions in-kind is very important, even beyond affordable housing.

An in-kind payment would ensure that the cost of the affordable housing is reflected in the final levy payment, but rates would have to be set to ensure that the affordable housing contribution does not consume all the levy receipts.

In the same way that it is important under the CIL regime, WBD are of the view that it is important to ensure that there is clarity and transparency about what infrastructure the charging authority may be willing to consider as payment 'in kind' and that authorities publish policies to this effect. This ensures the local community are clear that the infrastructure needed is still being delivered, but that, in specified cases, it is being delivered in kind rather than through levy receipts.

24(c). If an in-kind delivery approach is taken, should we mitigate against local authority overpayment risk?

If the value secured through in-kind delivery is greater than the final levy liability, there should be a claw-back provision for the party that has provided the in-kind contribution.

24(d). If an in-kind delivery approach is taken, are there additional steps that would need to be taken to support affordable housing quality?

Require that schemes meet nationally described standards.

Proposal 22: More freedom could be given to local authorities over how they spend the Infrastructure Levy
25. Should local authorities have fewer restrictions over how they spend the Infrastructure Levy?

No.

Local authorities should not be permitted to use receipts to reduce council tax or as revenue funding. The consideration being raised here is not so much a planning issue but one about public service delivery. Local authorities should be properly funded by central government through general taxation for the provision of public services.

Government has pledged to deliver the infrastructure that needs to accompany development e.g. transport improvements and social infrastructure – schools, healthcare and leisure facilities, etc. Given the significant existing pressures on these budgets, WBD questions whether it would be inappropriate to further dilute such funding by opening it up to other council departments.

In this context of flexibility to spend receipts, WBD notes that CIL charging authorities already have the ability, in addition to spending CIL receipts themselves, to pass funds to other bodies and fund infrastructure outside their area.

Charging authorities must produce a CIL 'charging schedule', setting out the rate(s) they will charge and must be supported by evidence, particularly concerning the impact of the levy on the economic viability of new development and by evidence on the costs of the infrastructure needed to support development in the area. Charging schedules should be consistent with, and support the implementation of, up to date local plans in England, the local development plan in Wales, and the London Plan.

Authorities are required to produce an infrastructure funding statement on an annual basis setting out income and expenditure relating to the community infrastructure levy and section 106 agreements.

The charging authorities are required to consult with their residents and other interested parties in setting their levy rates. Charging schedules are considered at an examination in public led by an independent examiner who establishes compliance with the legislation and consistency with statutory guidance. For the reasons set out above, WBD considers that local authorities already have significant flexibility and that there is a good balance between flexibility and transparency.

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