

By: Nigel Smith, Head of Development Investment

To: Policy Overview Committee – Tuesday 31st March 2009

Subject: Development Contributions and Future Community Infrastructure Provision. The effects of the current economic climate and planning legislation

Classification:

Summary:

This report highlights the significant effects of the current economic climate together with potential changes in the planning system (in particular, the proposed Community Infrastructure Levy - CIL), upon development contributions and the potential to deliver community infrastructure in the future. In this respect, the report also contains recommendations regarding initiatives to both protect the County Council's interests and help place us in a position to deliver regeneration objectives

Recommendations:

Although subject to additional scoping work, specifically in relation to 2 below, we request that POC approve the guiding principles and other recommendations below in order to provide a framework within which the Development Investment Team (DIT) can operate until we are in a position to make further recommendations

1. The Development Investment Team and Finance coordinating the development of an Infrastructure and finance model to deliver the objectives outlined in 8.1 subject to allocation of resources.
 2. Where required the use of mitigation measures outlined in 8.2 and conclude negotiations subject to approval by the Director of Finance and Executive Director, Strategy, Economic Development & ICT and permit the Director of Law and Governance to complete documentation as required.
 3. Consult with other authorities with a view to making a joint representation, or an individual KCC response if a joint one cannot be agreed, to CLG and Treasury in respect of CIL proposals, additional mainstream and gap funding.
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1. Introduction

The purpose of this report is to advise on the proposals regarding CIL and the potential effects for KCC. However, in line with a report to Cabinet Members on 16 March 2009 and as outlined in the summary above, it also covers the wider issue of the detrimental effects of the current economic climate on the potential to deliver community infrastructure.

In so doing, the report includes reference to the primary issues of :

1. The lack of funding for delivery of the community infrastructure (schools, communities, adult social services etc) necessary to support sustainable communities, particularly when balanced against the need to support the local economy in the current climate.
2. The risk of such, both financially and ultimately economically and socially in the absence of Government gap funding in this respect.
3. The effects on the current Medium Term Plan (MTP) and the additional measures proposed, due to the current economic climate, to assist the existing prudent financial procedures.
4. The potential effects of the proposed Community Infrastructure Levy (CIL) outlined in Paragraph 4. below.
5. The overall need to respond to changing circumstances and realign resources to deliver the corporate objectives outlined in the Regeneration Framework.

2. The Economic Climate & Viability

Housing delivery has, of course, been dramatically affected by the downturn in the economic climate. Where proposals are being progressed, the provision of adequate infrastructure through the planning process and, in particular, development contributions, is under significant pressure, particularly where viability issues need to be balanced against housing provision.

Currently, the major sites affected are reported to Chief Officers Group and The Informal Members Group for Budgetary Issues. Based on those recently reported (Charter House, Ashford. New Town Works, Ashford and Nichols Quarry, Shepway) the percentage of original contributions secured averaged approximately 47% of the figure sought (disregarding attenuation measures such as clawbacks (deferred contributions) and provision in kind). This compares with a cumulative success rate (contained in quarterly performance reports) of around 80%.

Based upon the South East Plan housing figures **Appendix 1** attached illustrates in crude terms the potential total development contribution required, based upon various assumptions, of approximately £1,152m and the potential for only securing £541m (47%). Current experience suggests KASS and CMY will be most affected.

Although some plaudits believe the housing market will begin to recover in the first quarter of 2010 there is no guarantee and it is felt that any recovery will be tentative with viability remaining an issue. This creates potential risks for KCC as demands on infrastructure increase but our ability to deliver is restricted to the limited financial resources available.

It should be noted that the Government's planning inspectorate (ratified by the Sec of State for Communities) consider the delivery of housing and other mitigating measures as priority therefore referrals to planning appeal or inquiry can result in less preferable outcomes.

In an effort to deal with viability issues and protect KCC's interests and the future provision of infrastructure a number of attenuation measures are proposed (please see paragraph 8.2 below).

3. Planning – General

National planning policy (reflected in Vision for Kent, the Kent Structure Plan and KCC's Development Contributions Guide) gives support to seeking contributions for a range of community and other infrastructure in order to ensure the delivery of sustainable communities. Kent has been at the national forefront of developing policy on contributions and, as a County Council, is well advanced. However, planning policy is in the process of radical change with the South East Plan soon to be adopted (and associated demise of the Kent & Medway Structure Plan), Local Development Documents (LDF process), the requirements of Planning Policy Statement 12 (PPS12 – June 2008) and the proposed Community Infrastructure Levy (CIL).

This means the new planning regime will be fundamentally 'plan led' and 'evidence based' and the provision of infrastructure, including the ability to finance and deliver a key test of soundness that will be scrutinised at the LDF public examination.

4. Community Infrastructure Levy (CIL)

CIL is a proposed new charge, which, if implemented, will permit local authorities, but not required them to introduce a levy upon development (currently assumed to be residential and commercial) and will in the main replace S.106 negotiations.

The Planning Act 2008 (PA) makes provision for the Secretary of State, with the consent of the Treasury, to make regulations (expected to be consulted upon in Spring 2009) providing for the imposition of CIL, which may or may not be mandatory. The overall aim of CIL is to ensure the costs of providing infrastructure to support development of an area can be funded, wholly or in part, by either owners or developers of land.

Under the PA the regulations may provide for district and county councils to become charging authorities in which case they will be required to produce a charging schedule which will have regard to actual and expected costs of infrastructure and alternative sources of funding (actual and expected). The charging schedule must be

evidence based and approved; it will be subject to independent examination and possibly consultation.

The PA also states that the charging schedule must have regard to economic viability of development therefore there is no guarantee that the required infrastructure will be 100% funded by CIL. In addition, the PA describes infrastructure as including:-

- Roads and other transport facilities
- Flood defences
- Schools and other educational facilities
- Medical facilities
- Sporting and recreational facilities
- Open spaces
- Affordable housing

Currently there is no mention of adult social care, libraries, adult education or youth therefore not only is there a serious risk of KCC only receiving part funding to deliver schools and roads because of economic viability but as currently proposed KCC will not receive any CIL funding for CMY and KASS.

For these reasons alone it is essential that we lobby other authorities with a view to a joint response to the CIL consultation in addition to KCC's individual response.

In readiness to provide an evidence base to inform and influence emerging planning policy such as LDFs and CIL the Development Investment Team have prepared Service Provider Statements based upon information supplied by CFE, CMY and KASS. These will be reported to Cabinet meeting on 30 March 2009.

5. Risks

The pressure to deliver the housing numbers required by the South East Plan will increase pressure on existing services and the need for additional infrastructure. Without adequate funding (including contributions) the threat of inadequate community facilities seriously threatens the ability to create communities rather than dormitory housing estates and the opportunity to maximise economic and social wellbeing for future generations.

The implications of not receiving, or a delay in receiving the anticipated contributions plus future receipts will:-

- Result in the need for directorates to contain the issue within their budget as a matter of principle.
- Severely affect KCC's ability to perform it's statutory duties as we will not be in a position to spend beyond our budgetary limits therefore the provision of infrastructure will be limited to the money available.
- Place pressure upon KCC to balance delivery of objectives set out by Government and the RF for creating sustainable communities against the

finance available.

- Place additional pressure on existing services as the same level of provision attempts to serve a greater number of Kent residents
- Prevent delivery of corporate objectives outlined in the Regeneration Framework, such as social inclusion because of a lack of local facilities.
- Increase the need to divert scarce surplus funding to make up any gap in provision.
- Increase the risk of diverting money from other lower priority proposals.
- Increase financial pressure particularly where contributions are deferred to an unknown date creating uncertainty about the timing of delivery.
- Place pressure upon KCC to raise funds via other means that may have adverse effects on Council Tax rates.
- Increase the risk of returning any unspent contributions not spent within the timeframe specified within the S.106 agreement because anticipated contributions from other sites due to contribute to the same infrastructure are delayed.

6. Effects upon the Medium Term Plan

The immediate concern is the effect the economic climate and viability issues will have upon current and proposed projects included within the MTP where S.106 contributions are expected to contribute in whole or part. **Appendix 2** attached shows the total capital spend for each directorate together with the amount for specific projects where S.106 contributions are anticipated plus the actual amount involved. In preparing the current MTP the assumptions around receipts were significantly revised downwards because of the current economic climate and possible associated risks.

Development contributions are an integral part of the capital programme and a continual monitoring process ensures that payments are received when due and prioritisation of projects and authority to spend is still subject to approval by the Project Advisory Group (PAG). It is proposed that existing systems and processes, which work extremely well, linking project approvals, delivery and financial aspects, including development contribution receipts are combined to avoid any increase in risk to KCC in this difficult economic climate whilst ensuring that any spend is limited to the finance available and any shortfall managed by the directorate concerned.

Naturally uncertainty and risk increases as the time span is extended therefore looking beyond the MTP period will require further work to enable it to interlink and inform the Regeneration Framework and What Price Growth 2.

7. Conclusion:

It is clear that the current economic climate, viability issues and changes (current and proposed) in the planning system are creating enormous uncertainty. Therefore more detailed work is required to formulate a comprehensive picture across the County of the infrastructure required in the short, medium and long term in order to develop a strategic approach that draws these issues together, provides intelligence and positions us effectively for the future. In doing so this should recognise central government's role in this agenda (particularly regarding gap funding) and the disparity between the Government's aspiration of creating sustainable communities for the future and the current inadequacies of the system and its consequential inability to deliver effectively.

It is proposed that this work informs and supports What Price Growth 2, the Regeneration Framework especially the Masterplan, Housing Strategy and the Next 4 Year Strategy & Programme in order to meet the challenge "Building Homes and Communities, not Estates". The work would also be used to inform a lobbying document to Central Government.

8. Proposals

8.1 In order to support What Price Growth 2 and deliver the Regeneration Framework (RF) high level objectives the Development Investment Team and Finance will coordinate the development of an infrastructure and finance model to evaluate KCC's infrastructure requirements over the South East Plan period and beyond if considered necessary having regard to available financial resources, the effects of viability and current and proposed changes to the planning system including CIL.

The information gathered will provide a comprehensive package for lobbying central Government.

To deliver the aspirations will require dedicated cross directorate working and support especially where service delivery is concerned and will involve:-

- further development of the Service Provider Statements in order to produce a charging schedule capable of informing CIL, LDF and tariff processes with sufficient resilience to withstand public examination. It is proposed the Statements will be developed further to inform the MTP and future infrastructure provision including capital and revenue funding implications.
- identifying the impact upon KCC if sufficient funds are not made available to support service delivery and the potential effects upon communities.
- Investigate other possible funding sources e.g. Tax Increment Finance (TIF) which is a method of borrowing funds for infrastructure on the basis that housing requiring that infrastructure will increase tax revenues.

- annual reports to districts as part of the overall monitoring process required by existing and emerging planning policies. These reports will allow KCC to highlight the positive action being taken, outline delivery programmes, indicate where contributions will be spent or are being held for particular projects but most importantly indicate any funding gap.
- using the information obtained in lobbying documents to Central Government.
- revision of KCC's Guide to Development Contributions in order to protect our position in the current economic climate and planning environment.

8.2 Where viability is an issue or a developer seeks to renegotiate an existing S.106 Agreement we will continue to negotiate a balanced and fair level of financial contributions and where appropriate apply mitigation measures, particularly where in support of the local economy and/or where wider regeneration objectives are met:-

- Through direct provision of facilities, locally based solutions, joint use of space and/or innovation, which support or compliment KCC services and help to deliver sustainable communities.
- By retaining flexibility, where possible, within the terms of legal agreements to enable KCC contributions to be placed in one pot and spent on KCC services as and when we determine, rather than being pre-apportioned and ring fenced for particular services and specific uses. This will enable us to manage and prioritise our capital spend amongst services, as appropriate, along with the associated revenue implications.
- By agreeing deferred payment provisions as a means of trying to secure the balance of outstanding contributions if the profitability of the development improves (increased sales values, reduced build costs etc) over the period of development.
- Where a developer/landowner seeks to renegotiate the terms of a S.106 Agreement reassess the requirements and if different attempt to secure a similar level of contribution to be placed in one pot and spent on KCC services as and when we determine, rather than being pre-apportioned and ring fenced for particular services and specific uses. In addition a revision to the payment phasing may be considered
- Any other measures considered appropriate to protect KCC's interests. Please note that the contents of paragraph 8.2 have been reported to the Budget IMG to be considered at their meeting on 25th March 2009.

- 8.3 Investigate and if possible develop mechanisms to enable KCC, or in conjunction with third parties, to unlock development potential including the delivery of new housing and commercial space and beneficial use of empty properties in an effort to create sustainable communities, employment, learning opportunities and skills enhancement.
- 8.4 The importance and objectives of the RF are recognised corporately and in order to help deliver the objectives specific issues require action especially the realignment of resources, priorities and available funding. It is proposed that the Regeneration & Economy Division will deal with their element through the restructure.
- 8.5 Subject to support from districts and stakeholders expand the infrastructure and finance model to provide an overall picture for Kent.

Appendix 1

Potential contributions required based upon South East Plan housing figures to 2026 assuming:-

- Only relates to primary & secondary, libraries, adult education. youth and adult social care
- Based upon contribution figures in KCC's 2008 Guide
- Potential worst case scenario assuming new build (in reality a mixture of new and extended facilities will be required)
- KCC Services will be required for all new homes (again in reality some services will have surplus capacity at various points in time)
- Dwelling mix of:- 60% Houses, 30% Flats, 10% 1 bed/sheltered

District	New Homes to 2026	Contributions
Ashford	22,700	£212,381,836
Canterbury	10,200	£95,431,486
Dartford	17,340	£162,233,526
Dover	10,100	£94,495,883
Gravesham	9,300	£87,011,060
Maidstone	11,080	£103,664,790
Sevenoaks	3,300	£30,874,892
Shepway	5,800	£54,264,962
Swale	10,800	£101,045,102
Thanet	7,500	£70,170,210
Tonbridge & Malling	9,000	£84,204,252
Tunbridge Wells	6,000	£56,136,168
TOTAL	123,120	£1,151,914,167
<i>Over 17 years to 2026 this equates to £67.76m per annum</i>		
Rates used		
Houses	£13,086.56	
Flats	£4,477.64	
1 bed	£1,608.00	
Average	£9,356.03	

Based on the major sites recently reported to Chief Officer Group and IMG (Charter House, Ashford. New Town Works, Ashford and Nichols Quarry, Shepway) the percentage of original contributions secured averaged approximately 47% of the figure sought (disregarding attenuation measures such as clawbacks (deferred contributions) and provision in kind).

Applying 47% results in a total contribution of this to results in a contribution of £541m instead of the total £1,151.9m. Current experience suggests KASS and CMY will be most affected.

Appendix 2

	2009-10 £000s	2010-11 £000s	2011-12 £000s	2012-2014 £000s	Total £000s
ORS (CFE)					
Total programme	278,519	216,671	82,934	189,859	767,983
Projects supported by Developer contributions	10,896	3,727	5,620	18,320	38,563
Developer contributions	6,659	3,660	5,620	16,070	32,009
KASS					
Total programme	23,046	39,430	35,770	12,651	110,897
Projects supported by Developer contributions	2,620	2,831	897	0	6,348
Developer contributions	470	2,310	865	0	3,645
EH&W					
Total programme	128,633	154,163	124,938	325,986	733,720
Projects supported by Developer contributions	3,036	7,011	26,650	150,194	186,891
Developer contributions	396	3,981	15,531	112,082	131,990
Regeneration					
Total programme	6,835	6,070	4,480	6,222	23,607
Projects supported by Developer contributions	0	440	0	0	440
Developer contributions	0	170	0	0	170
Communities					
Total programme	28,589	11,933	3,282	5,670	49,474
Projects supported by Developer contributions	5,943	0	0	350	6,293
Developer contributions	157	0	0	350	507

Scheme costs against which developer contributions are set are shown as the total for the particular year, not the total scheme cost against the whole life of a project

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Background Information: *Include ALL background information taken into account in preparing the report. (This does not include previous Committee Reports)*

•	Vision for Kent.
•	Kent Structure Plan.
•	KCC's Guide to Development Contributions and The Provision of Community Infrastructure.
•	Planning Policy Statement 12.
•	Planning Act 2008.
•	KCC's Framework for Regeneration (Draft Consultation).
•	Report to Cabinet Members on 16 March 2009, Development Contributions and Future Community Infrastructure Provision. The effects of the current economic climate and planning legislation.
•	Report to Informal Member Group on Budgetary Issues 25 March 2009, "Development Contributions – Section 106 Agreements".