

# Kent County Council

## Section 106 Short Focused Inquiry (SFI) Report

**September 2022**



## Headline Findings

- Since 2014, KCC has secured a total of about £300m in contributions from developers. However, 24% of the total infrastructure required in the county is neither secured nor expected, leaving a funding gap of about £4billion.
- Effective early engagement allows communities to have their say at a stage where their views can genuinely influence design decisions. The involvement of KCC Members in the early stages of the planning process is critical to maximising the impact of developer contributions and to promoting thriving and sustainable communities.
- Although KCC is a major infrastructure provider, it is not able, under current legislation, to adopt or implement its own CIL charging schedule. Kent District Councils determine the CIL monies that KCC receives to fund the delivery of infrastructure that it is responsible for.
- The 2020 Planning for the Future White Paper, and the Levelling-Up and Regeneration Bill (2022), propose substantial reforms to the national planning and regeneration system. A key proposal is the introduction of a new 'Infrastructure Levy' which will replace the existing Section106/CIL system. It will be set locally and non-negotiable, and it will be based on the sale value of the development.
- Kent has rich and varied biodiversity, with over 3,400 rare and threatened species. The impact of development and urbanisation on the natural environment should be factored into decision-making. Biodiversity Net Gain is an important measure to help protect the environment.
- Every local authority will be required to prepare design codes that should be met before planning permission for development is granted. The Kent Design Guide is available to all of Kent's Local Planning Authorities. It provides guidance for assessing planning applications and for achieving high standards of design and construction.
- Ensuring that unspent developer contributions remain with the communities they were intended for would increase levels of public understanding and trust towards the developer contributions system, and would improve the quality of life of Kent's residents.

# 1. Introduction and Scope

## 1.1. Introduction

1.1.1. Financial contributions from developers are normally used by KCC to increase infrastructure capacity to support services for which the local authority is responsible.

1.1.2. KCC seeks to secure contributions primarily for services including:

- Highways
- Primary and Secondary Education
- Adult Social Care
- Libraries
- Community Learning
- Youth Services
- Waste
- Broadband.<sup>1</sup>

1.1.3. Since 2014, KCC has secured a total of about £300m in contributions from developers. However, this has not been achieved without significant challenges. While KCC seeks to maximise contributions for essential community infrastructure, and to meet increasing demand, the current system presents several obstacles - including viability issues and planning policy restrictions.<sup>2</sup> Imminent national reforms to the planning system could present many more potential challenges.

1.1.4. The aim of this inquiry was to review the experience of Section 106 and other developer contributions in Kent, and to address the system's key challenges, in order to maximise support to KCC services and improve the lives of Kent residents.

---

<sup>1</sup> Kent County Council (2022) Section 106 Short Focused Inquiry, Written Evidence

<sup>2</sup> Ibid

## **1.2. Committee Membership**

1.2.1. The membership of the inquiry consisted of ten elected Members of Kent County Council:

Mr Tony Hills (Chairman Designate)

Mr Neil Baker (Conservative)

Mr Alister Brady (Labour)

Mr Nigel Collor (Conservative)

Mrs Trudy Dean (Liberal Democrat)

Ms Sarah Hamilton (Conservative)

Mr Mark Hood (Green Party)

Mr Andrew Kennedy (Conservative)

Mr Harry Rayner (Conservative)

Mr Robert Thomas (Conservative)

## **1.3. Scope**

1.3.1. The scope of the inquiry was:

1. To define, and briefly put into context, Section 106 contributions in Kent.

2. To explore the key challenges experienced by KCC in securing Section 106 contributions.

3. To identify actions that KCC could take to maximise Section 106 contributions.

## 2. Background

### 2.1. Definitions

2.1.1. The term '**Section 106 Agreement**' (**S106**) refers to Section 106 of the Town and Country Planning Act 1990. This is the primary legislation under which Local Planning Authorities (LPAs) are able to secure planning obligations through signed agreements between the developer and the authority.<sup>3</sup>

2.1.2. Section 106 Agreements are negotiated between a developer and the LPA to meet, or contribute to, the cost of providing new infrastructure to mitigate the impact of a new development.<sup>4</sup>

2.1.3. A '**Local Planning Authority**' (**LPA**) is the public authority whose duty it is to carry out specific planning functions in a particular area.<sup>5</sup> While Kent County Council is responsible for providing and maintaining a wide range of strategic infrastructure - such as roads, schools, and social care - it is often not the Local Planning Authority entering into legal agreements with developers. KCC therefore works closely with local District and Borough LPAs to arrange a timely transfer of developer contributions between the relevant authorities, and to ensure that its statutory responsibilities can be met.<sup>6</sup>

2.1.4. The **Community Infrastructure Levy (CIL)** is a levy that allows local authorities to raise funds from the owners or developers of land who are undertaking new building projects. The CIL helps local authorities to deliver infrastructure to support the development of their areas. In Kent, the funding raised from CIL is collected by Kent's Districts. While KCC is not directly responsible for collecting CIL, it receives funds from local Districts in order to meet its statutory duties.<sup>7 8</sup>

2.1.5. Both S106 planning obligations and the CIL are therefore designed to help pay for local infrastructure but there are differences in the way the two should be used. The CIL is intended to provide infrastructure to support the development of an area, while planning obligations are used

---

<sup>3</sup> MHCLG (2020) The Incidence, Value and Delivery of Planning Obligations and Community Infrastructure Levy in England in 2018-19, London

<sup>4</sup> House of Commons Library (2019) Planning Obligations (Section 106 Agreements) in England, London

<sup>5</sup> MHCLG (2020) The Incidence, Value and Delivery of Planning Obligations and Community Infrastructure Levy in England in 2018-19, London

<sup>6</sup> Kent County Council (2021) Infrastructure Funding Statement

<sup>7</sup> Ibid

<sup>8</sup> MHCLG (2020) The Incidence, Value and Delivery of Planning Obligations and Community Infrastructure Levy in England in 2018-19, London

to make an individual planning application acceptable in planning terms. Most site-specific impact mitigation which is required for a development to be granted planning permission should therefore be carried out using a planning obligation. The CIL does not need to be used for providing infrastructure on the site from which it is collected.<sup>9</sup>

2.1.6. A **Section 278 Agreement (S278)** refers to Section 278 of the Highways Act 1980. Under this legislation, highway authorities are able to secure planning obligations, through legally binding agreements with developers, in order to fund alterations or improvements to highways.<sup>10 11</sup>

2.1.7. KCC, as the local highway authority, is responsible for the maintenance and development of the county's road network. If planning permission has been granted for a development that requires changes or improvements to local highways, a Section 278 Agreement details the alterations that the developer needs to pay for and carry out.<sup>12</sup>

---

<sup>9</sup> House of Commons Library (2019) Planning Obligations (Section 106 Agreements) in England, London

<sup>10</sup> Ibid

<sup>11</sup> Kent County Council (2021) Infrastructure Funding Statement

<sup>12</sup> Ibid

## 2.2. National Context

### National context

- 2.2.1. A recent study conducted on behalf of the Ministry of Housing, Communities and Local Government showed that the value of developer contributions agreed in England in 2018/19 was £7bn. This represented an increase of 16% in the aggregate value of developer contributions since 2016/17.<sup>13</sup>
- 2.2.2. There were strong geographical variations in how developer contributions were generated and invested, with the majority (53%) being agreed in London and the South East. However, this proportion was lower than in 2016/17 (58%).<sup>14</sup>
- 2.2.3. Other regions of England increased their share of agreed developer contributions. Between 2016-17 and 2018-19, the proportion of the total value agreed more than doubled in the East Midlands (from 4% to 9%), and in the North West it increased from 3% to 6%.<sup>15</sup>
- 2.2.4. The source of developer contributions has not changed significantly. In 2018/19, CIL accounted for 12% of all developer contributions, down from 13% in 2016/17. Mayoral CIL remained constant at 3% of the total, and affordable housing contributions were unchanged at 67% of the total.<sup>16</sup>
- 2.2.5. The majority of developer contributions (85%) continue to come from negotiated S106 agreements. Between 2016/17 and 2018/19 this proportion was unchanged.<sup>17</sup>

---

<sup>13</sup> MHCLG (2020) The Incidence, Value and Delivery of Planning Obligations and Community Infrastructure Levy in England in 2018-19, London

<sup>14</sup> Ibid

<sup>15</sup> Ibid

<sup>16</sup> Ibid

<sup>17</sup> Ibid

## Planning Reforms

2.2.6. The Planning for the Future White Paper (August 2020), and the Levelling-Up and Regeneration Bill (May 2022), propose substantial changes to the country's planning and regeneration system. Reforms include: the intention to replace the existing Section 106/CIL system with a new 'Infrastructure Levy'; the requirement for local authorities to prepare design codes to help develop good quality, sustainable places, and; improving environmental outcomes.<sup>18 19</sup>

2.2.7. A key proposal is the introduction of a new, **national Infrastructure Levy** which will replace the existing Section 106/CIL system. The Bill proposes a simple and non-negotiable Infrastructure Levy that is locally set and based on the value of the property when it is sold. This will combine the affordable housing, S106 and CIL requirements. The proposal was justified, in part, as being necessary to: "*enable us to sweep away months of negotiation of Section 106 agreements and the need to consider site viability.*"<sup>20 21 22</sup>

2.2.8. The intended benefits of this new Infrastructure Levy include:

- Reducing the bureaucracy of the current Section 106 negotiation and administrative processes.
- Reducing delays and their associated costs.
- Removing the need to conduct viability tests on individual sites.<sup>23</sup>

2.2.9. Every local authority will need to have a **Design Code** that covers their entire area. These are design requirements that should be met before

---

<sup>18</sup> Levelling-up and Regeneration Bill (2022) House of Commons, Session 2022-23, London: The Stationery Office

<sup>19</sup> Local Government Association (2022) Levelling-up and Regeneration Bill, online, <https://www.local.gov.uk/pas/our-work/levelling-and-regeneration-bill>

<sup>20</sup> Levelling-up and Regeneration Bill (2022) House of Commons, Session 2022-23, London: The Stationery Office

<sup>21</sup> Gov.UK (2021) Planning for the Future, online, <https://www.gov.uk/government/consultations/planning-for-the-future/planning-for-the-future>

<sup>22</sup> Local Government Association (2022) Levelling-up and Regeneration Bill, online, <https://www.local.gov.uk/pas/our-work/levelling-and-regeneration-bill>

<sup>23</sup> Gov.UK (2021) Planning for the Future, online, <https://www.gov.uk/government/consultations/planning-for-the-future/planning-for-the-future>



planning permission for development is granted. The aim is to ensure that good design is considered at all spatial scales, from development sites to individual plots.<sup>24 25</sup>

2.2.10. One of the key reforms in the Levelling Up and Regeneration Bill is the replacement of the Environmental Impact Assessment and Strategic Environmental Assessment regime with a new system of environmental assessment: Environmental Outcomes Reports (EORs). This section of the Bill allows the Secretary of State to make regulations to set “*specified environmental outcomes*” against which consents and plans will be assessed, and to repeal or amend existing environmental assessment legislation.<sup>26</sup>

2.2.11. The Bill acknowledges that the impact of development on the natural environment needs to be considered in decision-making at both a strategic and project level, and commits to introducing the reforms in the Environment Act (2021) into planning policy. This Act contains provisions for the protection and improvement of the environment, including introducing a **Biodiversity Net Gain** (“BNG”) objective. This requires the biodiversity value attributable to a development to exceed the pre-development biodiversity value by at least 10%.<sup>27 28</sup>

---

<sup>24</sup> Local Government Association (2022) Levelling-up and Regeneration Bill, online, <https://www.local.gov.uk/pas/our-work/levelling-and-regeneration-bill>

<sup>25</sup> Gov.UK (2022) Government response to the Levelling Up, Housing and Communities Select Committee report on The Future of the Planning System in England, online, <https://www.gov.uk/government/publications/future-of-the-planning-system-in-england-government-response-to-the-select-committee-report/government-response-to-the-levelling-up-housing-and-communities-select-committee-report-on-the-future-of-the-planning-system-in-england>

<sup>26</sup> Levelling-up and Regeneration Bill (2022) House of Commons, Session 2022-23, London: The Stationery Office

<sup>27</sup> Ibid

<sup>28</sup> Environment Act (2021) House of Commons, Sessions 2019-21, 2021-22, London: The Stationery Office

## 2.3. Local Context

2.3.1. Local authorities are required to provide a summary of all the financial and non-financial developer contributions that they received in the previous financial year. This is presented in an Infrastructure Funding Statement (IFS) which includes details of contributions through S106, CIL and S278.<sup>29</sup>

2.3.2. According to KCC's most recent IFS, for 2020-21, the financial contributions secured by KCC through signed S106 Agreements amounted to almost £98.3million. Most of this funding was allocated to KCC by Kent's Districts and Borough Councils.<sup>30</sup>

2.3.3. Not all the funding that has been secured through S106 is actually received. Factors such as a stalled development, or changing planning circumstances through appeals and renegotiations, can affect the funding that KCC receives. The total amount of money actually received by KCC from S106 contributions in 2020-21 was almost £24.5million (Figure 1).<sup>31</sup> In 2019-20 it was about £17.9million.<sup>32</sup>

2.3.4. The service area that received the majority of the funding in 2020-21 was Education (with just over £21million), followed by Highways (£1.35million).<sup>33</sup> In the previous year, the same service areas were the main recipients, with £11million allocated to Education and £6million Highways.<sup>34</sup>

**F**  
:

Service Area	Amount
Adult Social Care	£141,034
Community Facilities	£731,199
Education	£21,161,564
Highways	£1,349,358
Kent Thameside	£1,101,120
Strategic Waste Services	£0
<b>Total</b>	<b>£24,484,276</b>

### **Total s106 contributions received by KCC, 2020-21**

<sup>29</sup> Kent County Council (2021) Infrastructure Funding Statement

<sup>30</sup> Ibid

<sup>31</sup> Ibid

<sup>32</sup> Kent County Council (2020) Infrastructure Funding Statement

<sup>33</sup> Kent County Council (2021) Infrastructure Funding Statement

<sup>34</sup> Kent County Council (2020) Infrastructure Funding Statement

**Source:** Kent County Council (2021) Infrastructure Funding Statement

2.3.5. Non-monetary (in-kind) contributions agreed in 2020-21 through S106 included the provision to local primary and secondary schools of 41 ultra-fast broadband and 6 land transfers.<sup>35</sup> This compared with 5 broadband and 1 land transfer agreed contributions in 2019-20.<sup>36</sup>

2.3.6. KCC is not responsible for collecting CIL. The ways in which can access a Kent District's CIL receipts vary between Districts. In some cases, a set percentage of CIL receipts are transferred from a District to KCC annually. In others, KCC has to make bids against a District's CIL receipts.<sup>37</sup>

2.3.7. In 2020-21, KCC received no funding from CIL receipts. It retained £750K from 2019-20 and used it in July 2021 as a contribution to the Swanley Train Station project.<sup>38 39</sup>

2.3.8. The value of S278 agreements takes the form of a performance bond paid to KCC by the developer based on the cost of the highway works (including utility works). The bond protects KCC against the risk of unforeseen expenditure if the activities are not completed by the developer.<sup>40</sup>

2.3.9. The total value of S278 signed bonds was almost £10million in 2020-21, and £9.9million in the previous year.<sup>41</sup> The total value of the fees received by KCC as part of S278 agreements was about £1.1million in 2020-21, and about £1.4million in 2019-20.<sup>42</sup>

---

<sup>35</sup> Kent County Council (2021) Infrastructure Funding Statement

<sup>36</sup> Kent County Council (2020) Infrastructure Funding Statement

<sup>37</sup> Kent County Council (2021) Infrastructure Funding Statement

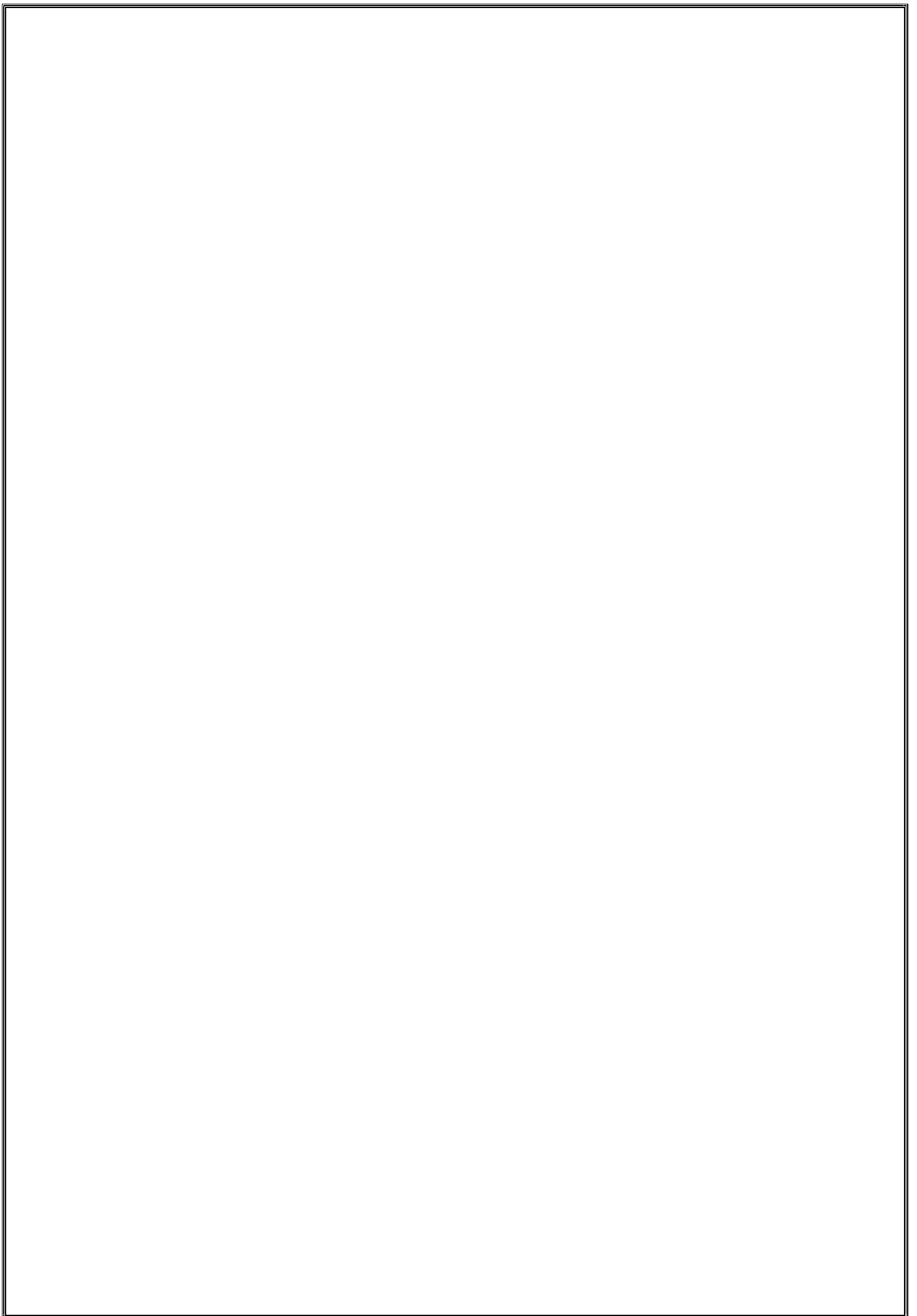
<sup>38</sup> Ibid

<sup>39</sup> Kent County Council (2020) Infrastructure Funding Statement

<sup>40</sup> Ibid

<sup>41</sup> Kent County Council (2021) Infrastructure Funding Statement

<sup>42</sup> Kent County Council (2020) Infrastructure Funding Statement



## 3. Key Issues and Recommendations

### 3.1. Early Member Involvement in the Planning Process

3.1.1. At a high level, planning is about making places, developing communities, and shaping the future. It plays a central role in identifying the type and location of developments, the areas that need to be protected or enhanced, and in assessing whether a proposed development is suitable. Planning is about upholding the wider public interest for the benefit of the whole community and not just individual constituents or particular interests. A central aim of planning is to deliver sustainable development, which means balancing the economic, environmental and social impacts of new developments.<sup>43</sup>

3.1.2. Councillors can play a key role in planning and in finding this balance. They can:

- act as a link between communities and the council
- help to set the direction of planning policy
- help to set vision and culture for the planning service, and work with officers.<sup>44</sup>

3.1.3. There was a strong consensus in the Committee, and from contributors to the inquiry, that early Member involvement in the planning process is critical to maximising the impact of developer contributions and to promoting thriving and sustainable communities.<sup>45 46 47</sup>

3.1.4. Early community engagement allows residents, councillors and other local stakeholders to be involved at the earliest possible stage in the planning of housing and other developments. It provides communities with a meaningful role in shaping their places, and allows developers to benefit from the insights that communities can provide through their unique local knowledge.<sup>48</sup>

---

<sup>43</sup> Local Government Association (2017) A Councillor's Workbook on Planning, London

<sup>44</sup> Ibid

<sup>45</sup> Kent County Council (2022) Section 106 Short Focused Inquiry, 27 May 2022, Maidstone

<sup>46</sup> Kent County Council (2022) Section 106 Short Focused Inquiry, 1 June 2022, Maidstone

<sup>47</sup> Kent County Council (2022) Section 106 Short Focused Inquiry, 10 June 2022, Maidstone

<sup>48</sup> City of Westminster (2022) Early Community Engagement in Westminster, London

- 3.1.5. Effective early engagement gives communities an opportunity to have their say at a stage when their views can genuinely influence design decisions. This gives officers a fuller understanding of residents' views when discussing a proposed development with developers at pre-application stage. This can promote developments that are more responsive to local need, and more resilient to future changes in local behaviour and demand.<sup>49</sup>
- 3.1.6. By sharing their vision with local communities in an open, transparent and collaborative way, developers can use early engagement to reduce the number and severity of objections that are raised at formal application stage. This can help councils to make more timely decisions and, in turn, can reduce unnecessary delays and expenses to applicants.<sup>50</sup>
- 3.1.7. The pre-application stage provides an invaluable opportunity for KCC Members to be actively involved in the process. Members value being well informed about emerging development proposals so they can advise their constituents and take a leadership role that encourages high-quality developments that meet the needs of the communities they represent.
- 3.1.8. Through early engagement, they can help to maximise the impact of developer contributions by encouraging a more efficient and appropriate allocation of funding to the communities they were intended for.
- 3.1.9. Committee members themselves provided several examples where more effective early information and engagement could have led to the use of developer contributions to provide infrastructure that better served the needs of local communities.<sup>51 52 53</sup>
- 3.1.10. The arrangements to provide more information and early involvement of councillors vary between authorities, but they generally include a range of options that allow councillors to exchange ideas and help develop schemes that meet the needs of an area.<sup>54</sup>
- 3.1.11. At its meeting on 22<sup>nd</sup> March 2022, the Growth, Economic Development and Communities Cabinet Committee asked for an 'All Member Briefing' to be arranged to provide all KCC Members with some information about developer contributions, financial data and key challenges they pose for KCC. The briefing also seeks to raise

---

<sup>49</sup> Ibid

<sup>50</sup> Ibid

<sup>51</sup> Kent County Council (2022) Section 106 Short Focused Inquiry, 1 June 2022, Maidstone

<sup>52</sup> Kent County Council (2022) Section 106 Short Focused Inquiry, 1 June 2022, Maidstone

<sup>53</sup> Kent County Council (2022) Section 106 Short Focused Inquiry, written evidence

<sup>54</sup> Local Government Association (2014) 10 Commitments for Effective Pre-Application Engagement, London

awareness amongst Members of how they can be better informed and how they can express their views on the Section106/CIL requirements within their own divisions.<sup>55</sup>

3.1.12. In addition to endorsing the establishment of the All Member Briefing, the Committee recommends that the relevant KCC services should inform KCC Members of proposals for new housing development in their own divisions. A structured mechanism should be designed to ensure that Members are notified of such proposals at the earliest possible time.

3.1.13. Effective development planning and appropriate infrastructure help to develop thriving and sustainable communities. Through effective information and early involvement, KCC Members can help to maximise the impact of developer contributions and promote planning that can meet the needs of the communities they represent.

3.1.14. Having considered all of the above issues, the Committee

m  
a  
k  
e  
s  
t  
h  
e  
f  
o  
l  
l  
o  
w  
i  
n  
g

#### **Recommendation 1**

**The Committee applauds the initiative to organise, as soon as possible, an All Member Briefing that provides KCC Members with information and advice about developer contributions. The Committee recommends that this All Member Briefing should:**

- 1) Provide comprehensive information and financial data on developer contributions that cover the different forms of infrastructure that KCC is responsible for, and outline the key challenges it faces.**
- 2) Clearly explain how KCC Members can be briefed and can be actively involved in the early stages of the planning process.**
- 3) Be updated and provided at regular intervals.**

---

<sup>55</sup> Kent County Council (2022) Growth, Economic Development and Communities Cabinet Committee, 10 May 2022, Infrastructure Funding. All Member Briefing Scoping Paper, Maidstone

### **Recommendation 2**

**The Committee believes that KCC Members should be advised early enough on planning applications to be able to have an input into Section 106 agreements. The relevant KCC services should inform KCC Members at the earliest possible time of proposals for new housing development in their own divisions.**



## 3.2. Planning Reforms

3.2.1. The Planning White Paper (August 2020), and the Levelling-Up and Regeneration Bill (May 2022), propose substantial reforms to the country's planning and regeneration system. Reforms include: the intention to replace the existing S106/CIL system with a new 'Infrastructure Levy'; the requirement for local authorities to prepare 'Design Codes' to help develop good quality, sustainable places, and; improving environmental outcomes.<sup>56 57 58</sup>

3.2.2. If a proposed development is expected to create pressures on existing infrastructure, the planning system allows for obligations to be placed on the developer to provide, or contribute to, the additional infrastructure. Historically, the majority of developer contributions have been secured through S106 agreements.<sup>59</sup>

3.2.3. KCC spends S106 contributions on a range of local infrastructure including primary and secondary education, highways and transportation, adult social care, libraries, adult education and youth and community facilities. District councils use contributions towards infrastructure such as affordable housing, health care, local play areas and further education.<sup>60</sup>

3.2.4. The legal tests used to consider a S106 agreement are set out in Regulations 122 and 123 of the Community Infrastructure Levy Regulations (2010). They require that the contributions must 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.<sup>61</sup>

3.2.5. S106 agreements are secured on a site-by-site basis, with payments typically being made in instalments as the development progresses. In 2020-21, KCC received £24.5million from S106 contributions.<sup>62</sup>

---

<sup>56</sup> Gov.UK (2021) Planning for the Future, online, <https://www.gov.uk/government/consultations/planning-for-the-future/planning-for-the-future>

<sup>57</sup> Levelling-up and Regeneration Bill (2022) House of Commons, Session 2022-23, London: The Stationery Office

<sup>58</sup> Local Government Association (2022) Levelling-up and Regeneration Bill, online, <https://www.local.gov.uk/pas/our-work/levelling-and-regeneration-bill>

<sup>59</sup> Kent County Council (2018) Kent and Medway Growth and Infrastructure Framework

<sup>60</sup> Ibid

<sup>61</sup> Ibid

<sup>62</sup> Kent County Council (2021) Infrastructure Funding Statement

- 3.2.6. 85% of the national value of developer contributions is determined through S106 agreements<sup>63</sup>, but the process for securing this funding can be challenging.
- 3.2.7. Unlike the CIL, the content of S106 agreements is negotiated between infrastructure providers and developers. This can sometimes create uncertainty for both. Infrastructure providers may not be able to forecast receipts accurately over a substantial period of time. This limits their ability to forward fund investment and can lead to projects being underfunded.<sup>64</sup>
- 3.2.8. For the developer, there is uncertainty over the level of financial and infrastructure commitments that will be needed to achieve their desired planning consent. This uncertainty is often only resolved at a fairly late stage in the planning process - after substantial funds have been expended in bringing forward an application. This can cause financing issues, and can potentially damage the viability of a scheme, delaying or even preventing its implementation.<sup>65</sup>
- 3.2.9. The Community Infrastructure Levy came into force in April 2010. It was designed to largely replace the S106 regime by allowing LPAs to raise funds from developers through a tariff-style approach.<sup>66</sup> Where the CIL has been adopted, it is the LPA that sets the levy, collects the receipts and allocates them to infrastructure projects.<sup>67</sup> The Kent Districts that have adopted CIL are: Canterbury, Dartford, Folkestone and Hythe, Maidstone and Sevenoaks.<sup>68</sup>
- 3.2.10. Kent is a 2-tier authority area. KCC is a major infrastructure provider but the current legislation does not allow it to adopt or implement its own CIL charging schedule. Kent District Councils determine the CIL monies that KCC receives to fund the delivery of the infrastructure it is responsible for. They are under no compulsion to transfer *any* receipts to KCC.<sup>69</sup> In 2020-21, KCC received no funding from CIL receipts. In 2019-20, it received £750K.<sup>70</sup>

---

<sup>63</sup> MHCLG (2020) The Incidence, Value and Delivery of Planning Obligations and Community Infrastructure Levy in England in 2018-19, London

<sup>64</sup> Kent County Council (2022) Section 106 Short Focused Inquiry, written evidence

<sup>65</sup> Ibid

<sup>66</sup> Kent County Council (2018) Kent and Medway Growth and Infrastructure Framework

<sup>67</sup> Kent County Council (2022) Section 106 Short Focused Inquiry, written evidence

<sup>68</sup> Kent County Council (2022) Section 106 Short Focused Inquiry, written evidence

<sup>69</sup> Ibid

<sup>70</sup> Kent County Council (2020) Infrastructure Funding Statement

- 3.2.11. According to the most recent Kent and Medway Growth Infrastructure Framework report, 24% of the total infrastructure required in the county is neither secured nor expected, leaving a funding gap of about £4billion.<sup>71</sup>
- 3.2.12. The Government has not yet been explicit about how the new Infrastructure Levy will be set, or about how it will be collected and allocated to infrastructure providers.<sup>72</sup>
- 3.2.13. The main concerns for KCC with the current CIL system involve its ability to raise, control and direct CIL contributions to meet the cost of delivering the infrastructure that is required. The Committee agrees with evidence from those advocating that KCC should be able to adopt its own CIL charging schedule, since it has statutory responsibilities for providing much of the infrastructure.<sup>73 74 75 76</sup>
- 3.2.14. The main concern identified by the Committee is that, if S106 contributions are removed and consolidated into a new Infrastructure Levy system whereby Kent District Councils alone can exact, control and distribute such funding, the problems experienced by KCC around CIL could be perpetuated or even exacerbated.<sup>77 78</sup>
- 3.2.15. KCC is a major provider of infrastructure in Kent, and endeavours to ensure that vital services such as schools, highways, Adult Social Care and libraries meet the needs of Kent residents. However, the current system for securing the funding necessary to provide and maintain this vital infrastructure seems to be flawed. As there is uncertainty over whether<sup>79</sup> and when the new Infrastructure Levy will be introduced – with changes to planning procedures not planned to take place until 2024<sup>80</sup> - the Committee believes that, in the meantime, the current system should be improved.

---

<sup>71</sup> Kent County Council (2018) Kent and Medway Growth and Infrastructure Framework

<sup>72</sup> Kent County Council (2022) Section 106 Short Focused Inquiry, written evidence

<sup>73</sup> Kent County Council (2022) Section 106 Short Focused Inquiry, 27 May 2022, Maidstone

<sup>74</sup> Kent County Council (2022) Section 106 Short Focused Inquiry, written evidence

<sup>75</sup> Kent County Council (2022) Section 106 Short Focused Inquiry, written evidence

<sup>76</sup> Kent County Council (2022) Section 106 Short Focused Inquiry, written evidence

<sup>77</sup> Kent County Council (2022) Section 106 Short Focused Inquiry, 27 May 2022, Maidstone

<sup>78</sup> Kent County Council (2022) Section 106 Short Focused Inquiry, written evidence

<sup>79</sup> Inside Housing (2022) New Levy to Replace Section 106 Still Being Considered, Government Confirms, online, <https://www.insidehousing.co.uk/news/news/new-levy-to-replace-section-106-still-being-considered-government-confirms-74888>

<sup>80</sup> Gov.UK (2022) Levelling Up and Regeneration: Further Information, online, <https://www.gov.uk/government/publications/levelling-up-and-regeneration-further-information/levelling-up-and-regeneration-further-information#next-steps>

3.2.16. If the new Infrastructure Levy is introduced, it will be crucial that the developer contributions received by KCC are sufficient to meet the costs of providing the necessary infrastructure in the county. As part of the legislative process of the Levelling-Up and Regeneration Bill, the Government will consult on a number of important provisions. This will give KCC an opportunity to lobby the Government in order to protect the County Council's position and secure the significant level of infrastructure funding that it requires.

### **Recommendation 3**

**KCC's Cabinet Member for Economic Development should write to the Secretary of State for Levelling Up, Housing and Communities and urge him to:**

- 1) Introduce a legal requirement for LPAs in 2-tier areas to pass a proportion of CIL funds to the County Councils for their areas.**
- 2) Enable County Councils in 2-tier areas to adopt their own CIL charging schedule in order to self-determine the funds required to provide the infrastructure that needs to accompany new development, and to collect and allocate the funding for that infrastructure.**

### **Recommendation 4**

**When responding to the Government's consultation on the Levelling-Up and Regeneration Bill, KCC's Cabinet Member for Economic Development, and the relevant KCC services, should make it clear that the levels of developer contributions received by KCC through the new Infrastructure Levy must be appropriate and sufficient to meet the costs of providing the infrastructure that needs to accompany new development.**

### 3.3. Environmental Outcomes

3.3.1. One of the key reforms in the Levelling Up and Regeneration Bill is the replacement of the Environmental Impact Assessment and Strategic Environmental Assessment regime with a new system of environmental assessment: Environmental Outcomes Reports (EORs). This section of the Bill allows the Secretary of State to make regulations to set “*specified environmental outcomes*” against which consents and plans will be assessed, and to repeal or amend existing environmental assessment legislation.<sup>81 82 83</sup>

3.3.2. In setting outcomes, the Secretary of State (SoS) must have regard to the 25-Year Environment Plan (and subsequent Environmental Improvement Plans), including the legally binding long-term environment targets and the interim targets that support them. The Government will also prepare guidance on how plans and consents demonstrate that they are supporting the delivery of environmental outcomes.<sup>84</sup>

3.3.3. The Bill acknowledges that the impact of development on the natural environment needs to be factored into decision-making at both a strategic and project level, and commits to bringing the reforms in the Environment Act (2021) into planning policy. The Environment Act 2021 contains provisions for the protection and improvement of the environment, including the introduction of a ‘biodiversity net gain’ (BNG).<sup>85</sup>

3.3.4. BNG is an approach to development or land management that aims to leave the natural environment in a measurably better state than it was beforehand.<sup>86</sup>

---

<sup>81</sup> Local Government Association (2022) Levelling-up and Regeneration Bill, online, <https://www.local.gov.uk/pas/our-work/levelling-and-regeneration-bill>

<sup>82</sup> Gov.UK (2022) Levelling Up and Regeneration: Further Information, online, <https://www.gov.uk/government/publications/levelling-up-and-regeneration-further-information/levelling-up-and-regeneration-further-information#next-steps>

<sup>83</sup> Chartered Institute of Ecology and Environmental Management (2022) What is the Levelling Up and Regeneration Bill?, online, <https://cieem.net/what-is-the-levelling-up-and-regeneration-bill/>

<sup>84</sup> Ibid

<sup>85</sup> Local Government Association (2022) Levelling-up and Regeneration Bill, online, <https://www.local.gov.uk/pas/our-work/levelling-and-regeneration-bill>

<sup>86</sup> Local Government Association (2022) Biodiversity Net Gain, online, <https://www.local.gov.uk/pas/topics/environment/biodiversity-net-gain>

3.3.5. BNG applies in England only by amending the Town & Country Planning Act (TCPA) (1990), and is likely to become law in 2023. The Environment Act sets out a number of key components to mandatory BNG, including the following:

- A minimum gain of 10% is required, calculated by using a 'Biodiversity Metric'.
- The habitat must be secured for at least 30 years. This is to be achieved through obligations or conservation covenants.
- The habitat can be delivered on-site, off-site or via statutory biodiversity credits.
- BNG requirements do not change existing statutory environmental and wildlife protections.<sup>87 88</sup>

3.3.6. Although this is an important step in protecting the natural environment, the Office for Environmental Protection (OEP) has questioned whether the minimum level of net gain specified in the Act will be enough to meet the Government's biodiversity ambitions.<sup>89</sup> This view is shared by the Kent Nature Partnership (KNP), which advocates a target biodiversity gain of 20%.<sup>90 91 92</sup>

3.3.7. KNP says that Kent has a rich and varied biodiversity resource, with over 3,400 rare and threatened species. Because of the services and functions that biodiversity provides, this resource can also be described as Kent's 'natural capital'. Natural capital provides food and raw material, regulates air, water, soil and climate, and supports us culturally with non-material benefits.<sup>93</sup>

3.3.8. With unprecedented population growth and urbanisation, additional food and materials will be required, with intensive food production and farming placing further pressures on the land. This growth is also producing a highly fragmented landscape with small pockets of habitat supporting rare and vulnerable species. Fragmentation impairs species movement and migration, making these isolated populations less able to survive or adapt to changing climate conditions.<sup>94</sup>

---

<sup>87</sup> Environment Act (2021) House of Commons, Sessions 2019-21, 2021-22, London: The Stationery Office

<sup>88</sup> Local Government Association (2022) Biodiversity Net Gain, online, <https://www.local.gov.uk/pas/topics/environment/biodiversity-net-gain>

<sup>89</sup> Office for Environmental Protection (2022) OEP Advice in Response to Biodiversity Net Gain Consultation, online, <https://www.theoep.org.uk/report/oep-advice-response-biodiversity-net-gain-consultation>

<sup>90</sup> Kent County Council (2022) Section 106 Short Focused Inquiry, 27 May 2022, Maidstone

<sup>91</sup> Kent Nature Partnership (2020) Justification for a Biodiversity Net Gain Target of 20% in Kent

<sup>92</sup> Kent County Council (2022) Section 106 Short Focused Inquiry, written evidence

<sup>93</sup> Kent Nature Partnership (2020) Justification for a Biodiversity Net Gain Target of 20% in Kent

<sup>94</sup> Ibid

3.3.9. KCC recently commissioned an independent assessment of the potential effect of a 15% or 20% BNG target on the viability of residential-led development in Kent. The purpose of this assessment was to evaluate the feasibility of a higher target, and to determine whether it materially affect the viability of development in the county.<sup>95</sup>

3.3.10. Amongst other things, the assessment concluded that:

- Increasing BNG from 10% to 15% or 20% would not materially affect viability in the majority of cases, when delivered onsite or offsite.
- In most cases, the major cost is in meeting the mandatory, minimum 10% BNG. The cost to increasing to 15% or 20% BNG is generally negligible.
- Because BNG costs are low in comparison with other policy costs, they are unlikely cause a development to be unviable.<sup>96</sup>

3.3.11. The Committee believes it is critical that the impact of development and urbanisation on the natural environment should be factored into decision-making. BNGs are an important measure to help protect the environment, and their impact should be maximised, while having consideration for the viability and cost of developments.

3.3.12. The Committee therefore recommends the following:

#### **Recommendation 5**

**KCC should work with all of Kent's Local Planning Authorities to secure, unless there are exceptional circumstances, a minimum of 20% Biodiversity Net Gain from new developments.**

---

<sup>95</sup> Kent County Council (2022) Viability Assessment of Biodiversity Net Gain in Kent; Final Report

<sup>96</sup> Ibid

### 3.4. Kent Design Guide

3.4.1. Another key reform in the 2022 Levelling-Up and Regeneration Bill is the requirement for local authorities to prepare local 'Design Codes'.<sup>97 98 99</sup>

3.4.2. A design code is a set of simple, concise, illustrated design requirements that provide specific, detailed parameters for the physical development of a site or area. Design codes are important because they provide a framework for creating greener, sustainable and distinctive places, with a consistent and high-quality standard of design.<sup>100</sup>

3.4.3. Every local authority will need to prepare design code requirements that should be met before planning permission for development is granted. Developers will have to comply with the styles drawn up and favoured locally - from the layout or materials used, to how green spaces are provided.<sup>101 102</sup>

3.4.4. The obligation to prepare Design Codes will be a new process for many authorities, and there are concerns that planning departments are increasingly under resourced,<sup>103 104</sup> urban design skills and capacity are low and declining,<sup>105</sup> and that many may struggle to find the resources and skills needed to prepare effective local codes.<sup>106</sup>

---

<sup>97</sup> Gov.UK (2021) Planning for the Future, online, <https://www.gov.uk/government/consultations/planning-for-the-future/planning-for-the-future>

<sup>98</sup> Levelling-up and Regeneration Bill (2022) House of Commons, Session 2022-23, London: The Stationery Office

<sup>99</sup> Local Government Association (2022) Levelling-up and Regeneration Bill, online, <https://www.local.gov.uk/pas/our-work/levelling-and-regeneration-bill>

<sup>100</sup> MHCLG (2021) National Model Design Code, London

<sup>101</sup> Local Government Association (2022) Levelling-up and Regeneration Bill, online, <https://www.local.gov.uk/pas/our-work/levelling-and-regeneration-bill>

<sup>102</sup> Gov.UK (2022) New Bill to Level Up the Nation, online, <https://www.gov.uk/government/news/new-bill-to-level-up-the-nation>

<sup>103</sup> Local Government Association (2022) Local Planning Authorities: Developing a Recovery and Resilience Planning Package Post-Pandemic, online, <https://www.local.gov.uk/housing-planning-and-homelessness/local-planning-authorities-developing-recovery-and-resilience>

<sup>104</sup> MHCLG (2020) The Incidence, Value and Delivery of Planning Obligations and Community Infrastructure Levy in England in 2018-19, London

<sup>105</sup> Urban Design Group (2017) Design Skills in English Local Authorities

<sup>106</sup> Planning (2022) The Challenges that the Government's Proposed Requirement for Authority-Wide Design Codes Will Present to Councils, online, <https://www.planningresource.co.uk/article/1790068/challenges-governments-proposed-requirement-authority-wide-design-codes-will-present-councils>



- 3.4.5. KCC has been involved in the Kent Design Initiative. This is a partnership of Kent's local authorities, developers, builders, communities and interest groups that have joined forces to campaign for good design in Kent.<sup>107</sup>
- 3.4.6. To help achieve this aim, the partnership published the Kent Design Guide. Its aim is to ensure that all new developments result in vibrant, safe, attractive and liveable places. It offers criteria for assessing planning applications, and helps planners, building designers, engineers and developers to achieve high standards of design and construction. It will also provide planning committee members and officers with the tools to refuse consent for poor design.<sup>108</sup>
- 3.4.7. The Guide is available to all of Kent's local authorities for formal adoption. It is expected to be used as a supplementary planning document, attached to either the Local Development Framework or the Local Plan.<sup>109</sup>
- 3.4.8. The Committee believes that local Design Codes can play an important role in promoting greener, more sustainable and distinctive places in Kent.**
- 3.4.9. The Committee applauds and endorses the Kent Design Guide, and encourages all Kent LPAs to adopt it formally.**

---

<sup>107</sup> Kent County Council (2022) Kent Design Guide, online, <https://www.kent.gov.uk/about-the-council/strategies-and-policies/regeneration-policies/kent-design-guide>

<sup>108</sup> Ibid

<sup>109</sup> Ibid

### **3.5. Unspent Developer Contributions**

- 3.5.1. Developers are not simply house builders; they are also community builders. It is crucial that there is a strong framework to ensure that developer contributions are used effectively and transparently, for the benefit of local communities. It is also important that there is a mutual understanding between developers and local authorities about how these contributions should be used, underpinned by a clear set of shared principles.
- 3.5.2. Developers' financial contributions should be spent in accordance with their negotiated purpose and within their agreed time limit. Most S106 agreements have a return clause whereby, if a contribution remains unspent after a certain period, KCC is legally obliged to hand it back to the developer.<sup>110</sup>
- 3.5.3. KCC has a monitoring mechanism which flags up repayment deadlines and minimises the amount of contributions that are not spent within the agreed timeframe. In 2020-21, no S106 contributions were lost to KCC because of a return clause.<sup>111</sup>
- 3.5.4. However, the evidence, and the experience of Committee members themselves, identified instances of unspent developer contributions that were very much needed to support the communities they were intended for.<sup>112 113</sup>
- 3.5.5. The Committee strongly believes that, if financial contributions cannot be used for their originally stated purpose within the agreed timeframe, then they should be given directly to the local community, rather than returned to the developer.
- 3.5.6. The core principle underlying this is that these financial contributions should always benefit the communities they were intended for - even if the originally agreed use for the money is not met.
- 3.5.7. This view is shared by the Home Builders Federation (HBF) itself. The HBF commissioned a national poll to explore public awareness of developer contributions to local communities, and to seek views on how these contributions should be used and communicated.<sup>114</sup>

---

<sup>110</sup> Kent County Council (2021) Infrastructure Funding Statement

<sup>111</sup> Ibid

<sup>112</sup> Kent County Council (2022) Section 106 Short Focused Inquiry, 1 June 2022, Maidstone

<sup>113</sup> Kent County Council (2022) Section 106 Short Focused Inquiry, 1 June 2022, Maidstone

<sup>114</sup> Home Builders Federation (2020) Building Communities; Making Place a Home, London

3.5.8. The conclusions from the poll were that:

3.5.9. People in England and Wales are almost twice as likely (73%) to think that housing developments can increase pressure on local facilities and services (such as schools and health services) rather than to accept that developer contributions are critical in building or improving local communities (for instance, health facilities, local parks, playgrounds or roads) (37%).<sup>115</sup>

3.5.10. The public would welcome efforts to increase levels of transparency in the system. Over half (52%) are interested in knowing more about developer contributions in their area. Almost three quarters (73%) think that unspent developer contributions should be spent in their local area, compared to 7% who think they should be put to use for wider national infrastructure improvements, or retained by the council.<sup>116</sup>

3.5.11. In response to this research, HBF devised a set of practical policy recommendations that it believed would increase levels of public understanding and trust towards the developer contributions system.<sup>117</sup>

3.5.12. A key recommendation echoes the Committee's belief that any unspent contributions should remain with the local communities that they were intended for.<sup>118</sup>

3.5.13. Having considered the above issues, the Committee

r  
e  
c  
o  
m  
m  
e  
n  
d  
s  
t  
h

#### Recommendation 6

**KCC's Cabinet Member for Economic Development should lobby the Secretary of State for Levelling Up, Housing and Communities and ask him that, when a financial contribution is made by a developer but is not used by the relevant local authority in the agreed timeframe, it must be given directly to the local community that it was intended for, rather than returned to the developer.**

e following:

---

<sup>115</sup> Ibid

<sup>116</sup> Ibid

<sup>117</sup> Ibid

<sup>118</sup> Ibid

