

## **RESPONSES FROM SEVENOAKS DISTRICT COUNCIL TO THE PLANNING WHITE PAPER**

### **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 main priority for Sevenoaks District Council (SDC), with any new development in an area, is that it meets the requirements of the Local Plan, unless material considerations indicate otherwise. In drafting the Local Plan, a local authority considers a large amount of evidence, they also consider the input of the community as well as infrastructure providers, which leads them to determine the planning priorities for District through its policies. A Local Plan covers a wide range of planning issues.

SDC would therefore expect any development that happens in our District to meet our affordable housing requirements, addresses a local need (e.g. employment space), that the design enhances the site and surrounding area and that there is sufficient green space for example. On the larger sites, in addition to the above, SDC would expect that adequate and appropriate infrastructure is provided on site or off site including education or health. This creates a successful development and we would therefore not see one element as more important than another.

Our Local Plan has undergone a viability assessment to ensure that developers can provide all that is required in our policies and that the developments will remain viable.

It is worrying that the Government should look to prioritise a particular area of a development, as this could mean that whilst the design of a scheme is prioritised or the correct amount of infrastructure is provided, that other very important issues are compromised such as employment land, green spaces, ecology, sustainable building materials, infrastructure or biodiversity, which would be unacceptable.

In particular, SDC would be concerned if the Govt decided to encourage developers/local authorities with the clear focus on Affordable housing, as whilst this will provide for one need, this would not work for the community, as it would mean that roads, schools, employment or health care etc. that are also needed to support a development would not be prioritised. We do not want to end up with large amounts of housing with nothing to support it.

Sevenoaks District Council would therefore ask that when assessing a development or allocating the levy that Local Authorities are given the authority to assess each

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development on its own merits, on a site by site basis to ensure that it has the correct design and facilities for that specific area and that it is supported by the appropriate infrastructure for that development.

**Q22(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?**

**[Yes / No / Not sure. Please provide supporting statement.]**

Not sure.

The role of CIL and Section 106s are different. They have clear distinct roles. SDC would support allowing local authorities to capture a greater proportion of the development value, but would be concerned with the loss of 106's (Legal Agreements) completely as they do a lot more than just secure money for affordable housing.

We would therefore suggest, if a new Levy were introduced that there still be an option to create a legal agreement to control ownership, landscaping, ecology and also the tenure of affordable housing units as this is the most secure way to provide all the elements which would make a scheme that would normally be unacceptable, acceptable. Completely taking away the ability to agree a 106 agreement would remove a much needed element of the planning system and would mean that a lot of planning applications would become unacceptable without these in place.

SDC would also welcome the proposal to have a fixed proportion of development value set as a low threshold as this would mean that Local Authorities would benefit from more income, as we would be able to capture the up lift on the sales value of each development rather than have a set charge across the District. This seems sensible.

SDC would however be concerned as to how the threshold is set. SDC would ask that the threshold should be set very low. A significant proportion (approximately 30%) of new homes in or District are on sites of 9 units or less. This is due to the constrained nature of the District having over 93% Green Belt and large areas covered by AONB, which reduces the ability for larger sites to come forward. If the threshold was set at 10 houses or above this would considerably reduce the amount of Levy and affordable housing that could come forward. This would be, and has already proven to be, damaging to the District and community.

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In addition to this SDC, is extremely concerned that if a threshold is set for 10 units and above for example, that we would receive a high number of applications for 9 units to exclude them from paying the Levy. What legislation could the Government put in place to ensure that developers maximise development on a site and also ensure that developers do not apply in stages or submit a number of applications to keep the amount of each application under the threshold.

If the Govt decides to set the levy based on an increase in value, SDC would like further information as to how the value would be sought and assessed. If the onus is to be put on the Local Authorities to understand the value and uplift, officers would need significant training or would need to be provided with money to employ someone who is qualified to assess the value of developments. If it is for a developer to provide this financial information, this would be quite onerous if it is a small firm and Local Authorities would still need to employ a qualified person to check the information. Planning/Council Officers for example would not be qualified to understand if a developer has artificially raised the costs of development, which would mean that there was less of an uplift in value at the sale stage. So SDC would welcome further advice as to how this uplift is to be understood, monitored and enforced.

**Q22(b). Should the Infrastructure Levy rates be set nationally at a single rate, set nationally at an area-specific rate, or set locally?**

**[Nationally at a single rate / Nationally at an area-specific rate / Locally]**

It is SDC's view that the new Infrastructure Levy rates should be set locally.

Infrastructure requirements and the amount of value that can be gained from each development differ between areas and also between sites. It is considered that setting the levy at a national level is too broad and will not allow Local Authorities the freedom to consider local and on site issues. Locally setting the rate would also enable the policies laid out in the Local Plan to be taken into consideration. It is considered that setting a levy charge, taking into account all local issues and considering the potential levy value for development are better understood and implemented locally, scheme by scheme.

It is SDC's view that guidance for setting rates could be set nationally. For example, to define the types of development, and how it should be applied to each development, but the actual threshold above which the new levy would be implemented and the amount of uplift that should be applied and how it should be applied to each development should be determined locally.

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In addition to the above, SDC would also like to better understand what the Govt mean by area specific rates and how they will be worked out. But the main concern of SDC is that we would like to flexibility and authority to set rates and decide how and where the Levy is spent at a local level. SDC would also support the setting of a threshold locally. This means that the threshold could be set to ensure that the maximum amount of the levy could be sought and also ensure that development would remain viable as the viability would depend not just in the Levy but also all the other requirements in our Local Plan.

**Q22(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?**

**[Same amount overall / More value / Less value / Not sure. Please provide supporting statement.]**

More value to enable Local Authorities to invest in infrastructure, affordable housing and local communities.

Currently due to the set CIL charge there is no flexibility in the CIL charge as this is set through the CIL Charging Schedule and cannot be amended if development increases in value. In addition to this, the fact that a number of CIL exemptions have been introduced, has meant that the amount of CIL income is not enough to enable SDC to make large investments towards the infrastructure in the District. Most of the CIL contributions that SDC have made have been top ups and towards small scale infrastructure projects. This means it has reduced the amount of CIL that has been made available to support some of the larger more strategic projects in the District or cross boundary initiatives. We have also had to reject a number of bids that have come forward, due to insufficient funds.

SDC would welcome a greater income to better support much needed infrastructure in the area. SDC also considers that this money should be for Infrastructure only (with the exception of the neighbourhood payments) to ensure that all the income goes towards supporting development in the area. Any flexibility to cover the costs of service provision or reducing Council tax would reduce the amount of money being spent where it is needed.

Whilst SDC supports the increase in income, we would however require more information in regard to our role in delivering and securing infrastructure. Whilst SDC would be happy to have authority over setting the charges and deciding where the levy will be spent, we would not want to have play a greater role in actually implementing the infrastructure. SDC would therefore like clarification as to their

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role in this new structure. Whilst SDC are happy to work with infrastructure providers they would not wish to overtake that role.

SDC would also question whether the Government would consider is looking at how the different values across different types of land would be considered. For example, considering how the levy would address the difference between land value increases for greenbelt release land versus prime real estate near highly sustainable locations. There is considerably more potential for an uplift in developer profitability for projects based on land purchased at agricultural values but these developments would also require significant infrastructure (of all types) to make them liveable in. It is also much cheaper to develop on virgin land. SDC would therefore recommend that any exceptional circumstances greenbelt sites should have a much higher levy contribution as they would require more infrastructure to be put in place to support it.

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

**[Yes / No / Not sure. Please provide supporting statement.]**

Not sure

SDC is very concerned that borrowing against the Levy would put SDC and local authorities at a very high risk of being unable to pay the money back. As the 'levy' is proposed to be paid much later in the process than CIL, it increases the risk that sites will not be built out and payments not forthcoming, therefore reducing the ability to pay the money back. The Govt should not put local authorities in this position.

Linked to this, Sevenoaks District Council are also concerned, with the proposals that the 'levy' will be paid later and yet we are required to ensure that the appropriate infrastructure is in place before development commences. This appears to encourage Local Authorities to borrow against the Levy. This considerably increases the risk to Sevenoaks District Council which is of a concern. Local Authorities could end up with borrowing money, securing infrastructure and then the developer decides not to complete the development or occupy units, leading to no income. Sevenoaks District Council therefore ask that help is given to Local Authorities to reduce their risk.

In light of these concerns, it would therefore be helpful for the Government to clarify what they expect Local Authorities to do, their role and the level of risk they expect them to take. If for example the Govt expect Local Authorities to borrow, to provide infrastructure for every project this would involve then

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spending large sums of money which would clearly put them at great risk which would be unacceptable.

Due to the fact that Local Authorities have no control over when development commences or money through the levy will come forward, it should be recognised that this will also increase the risk in being able to pay the loan back. SDC would therefore ask that these loans at the very least are long term and also allow flexibility if the situation changes.

In addition to this, whilst it is understood that Local Authorities would be expected to assure themselves that this borrowing is affordable and suitable, SDC would ask that clear guidelines are put in place by the Govt, to help understand what a suitable project would be. Also guidance on what they consider to be affordable, for example Local Authorities could look at past 5 years income of CIL and how much they could borrow against that etc.

It would also be helpful to understand if the Govt plan to draft any consequences where Local Authorities cannot pay or need to defer payments so the risks can be fully understood.

SDC also consider that whilst it may be helpful to be allowed to borrow against the infrastructure levy, rather than this being an option (as described in the white paper) we are concerned that this will be expected to ensure infrastructure is provided. We would therefore seek clarification as to whether borrowing would be an option or required.

As Local Authorities are not the party that would deliver the Infrastructure Levy one suggestion would be whether the infrastructure providers themselves could borrow against the Levy, reducing the risk to Local Authorities.

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

**[Yes / No / Not sure. Please provide supporting statement.]**

Yes.

SDC consider that it is essential that the reformed Infrastructure Levy captures the changes of use permitted through permitted development rights. New development allowed through permitted development rights, for example new dwellings, would generate a need for new or improved infrastructure to support it. The only way that infrastructure can be funded to support new development allowed as permitted development is to allow the levy to capture uplift in value from these

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developments. Some of the developments in our District, where there has been a change of use from offices to residential under permitted development, have resulted in considerable profits to developers, with no requirement to pay CIL or contribute to the infrastructure required to support the new housing. It is SDCs view that it would not be unreasonable to expect some of that profit to be paid back through the 'levy' to support the infrastructure requirements for these permitted developments.

SDC would however ask for more details as to how this could be implemented as currently the CIL payments/liability are triggered by planning applications so it would be helpful to know how and when Local Authorities would apply the levy for permitted development for example. This advice should also include how Local Authorities can take enforcement action and what interest if any could be charged if the levy is not paid.

**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?**

**[Yes / No / Not sure. Please provide supporting statement.]**

Yes.

Through evidence produced by SDC, through their Local Plan process, there is a clear shortfall in the amount of affordable housing that is being provided, so any legislation that ensures that the same amount or more affordable housing is being provided, particularly on site would be welcomed.

To ensure that the same amount or more affordable housing is provided on site SDC would ask that the 'threshold' for levy payments is set very low. Recent changes to legislation in regard to affordable housing, has meant that the Council has lost a considerable of funding and on site provision of affordable housing. If the Govt set the threshold high, this would follow the previous change and result in a loss of a significant amount of income to SDC. As explained before, we have a large amount of smaller sites coming forward where if the 'threshold' was set high, it would result in no levy being paid and no affordable housing being provided for over 305 of sites in our District. The Levy and threshold really needs to be set a local level to reflect local circumstances. SDC has a clear Housing Strategy, which includes precise information to inform us as to the type and tenure of housing that we require in the district at a local/ward level. SDC would therefore ask that the Govt introduce flexibility into this system to allow for us to be able to deliver against these identified needs at such a micro level.

Any proposal to allow the affordable housing to be less or lost in time, would however be strongly objected to by SDC. It would appear that the Govt is keen to

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provide an increased number of affordable units on site, and yet also give the developers flexibility to revert these units back to market properties as soon as the market changes. This would lead to a number of affordable housing units being lost at a time when they are most needed. SDC therefore strongly object to this proposal.

It is SDCs view that allowing any flexibility with affordable housing would defeat the aims of securing more on site at the outset and the aims of getting more affordable housing on site. The affordable housing that is provided by each development needs to be retained in perpetuity.

SDC would also request that clear definitions are provided as to the types of affordable housing that could be provided through the Levy. They would also request that Local Authorities have the authority and flexibility to request and ensure that the types of affordable housing that is needed in each area is provided. It is also suggested that the Govt provide an appropriate means of securing the housing for the purpose needed e.g. legal agreement.

Whilst it would appear that we can still work with local housing providers to ensure that the right tenure of affordable housing is put in place, SDC would be keen to know exactly how the Govt, with this new process, would control the tenure of each unit, ensure that a nomination procedure is followed and most importantly that it remains in perpetuity and affordable. Any proposal to allow the affordable housing to be lost either at the initial stage or through time would be strongly objected to by SDC.

**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?**

**[Yes / No / Not sure. Please provide supporting statement.]**

Not sure.

Securing payment in kind would mean that affordable housing takes priority over other forms of infrastructure. As the provision of affordable housing in kind would mean that less money would be available for other forms of infrastructure needed to support the development. This may not be appropriate for every development. SDC would therefore suggest that flexibility is brought into this proposal, to ensure that the amount of affordable housing is appropriate for a particular development and that other options can be considered if it is not.

SDC would ask that the amount of 'in kind' payment be implemented on a case by case basis, allowing the Local Authority to determine what the most appropriate form of infrastructure is for each site.

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As part of the changes, the Govt has suggested that development without infrastructure in place cannot go ahead, surely it must be part of the Local Authorities responsibility to determine what must be in place for each site. If for example, a large amount of money from the levy is required to support transport improvements/access improvements then the provision of affordable housing may not be the priority for this site.

In addition to this, if the amount of levy is off set (reduced) due to affordable housing being provided on site and the market changes and these units are lost. We have lost the benefit of affordable housing and also the Levy income that we would have got for a site. In the long term this would result in a reduction in income and the amount of affordable housing, which would be unacceptable.

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

[Yes / No / Not sure. Please provide supporting statement.]

Not sure.

It is assumed that you refer to a situation where value secured through in kind units becomes greater than the value of the levy that should be paid at the end of the development and whether a developer can re-claim payments.

SDC would support a proposal where the developer would have no right to claim over payments. They would however appreciate the Govt drafting legislation that prevents over payments from occurring in the first place.

SDC would welcome standardised agreements to show how risk sharing would work in this way. We would also welcome advice as to how this risk could be reduced through policy design. More information is needed as to how this would work before we could comment fully.

**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?**

[Yes / No / Not sure. Please provide supporting statement.]

Yes.

SDC consider that working with Housing Associations, an appropriate step would be to set up design codes/policy to ensure that the properties that are being provided

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are of an appropriate size, design and quality. Properties would only be accepted 'in kind' if they met all the criteria laid out.

In addition, SDC also consider that clear and strong enforcement procedures are put in place if the design codes/policies are not met. Whilst the Govt suggest financial implications if standards are not met, it would also be helpful to have enforcement procedures in place to ensure that any units built, that do not meet the required standard, can use enforcement procedures to ensure that they are amended to meet the standards. Just providing financial consequences or allowing the Local Authorities the opportunity to buy these properties will not achieve the aim of bringing them up to standard and being able to be occupied. There needs to be strong enforcement procedures in place for this to work.

#### **25. Should local authorities have fewer restrictions over how they spend the Infrastructure Levy?**

**[Yes / No / Not sure. Please provide supporting statement.]**

No.

SDC are extremely concerned with this proposal, as there is currently insufficient funding to cover all the infrastructure project currently required.

If there were fewer restrictions, which allowed the 'levy' to be spent on projects and services that were not infrastructure, it is likely that not all levy would be spent on Infrastructure or could be frittered away on smaller vanity projects, improving other services or reducing Council tax. In particular, SDC would support any legislation that sought to ensure that the majority of the levy money was spent on larger infrastructure projects e.g. roads and schools to support development allocated in the Local Plan. If, however, smaller infrastructure projects were to come forward that clearly provided a strong local or community benefit and supported new development, SDC would like the flexibility to be able to contribute to these projects through the Levy.

SDC supports the fact that Parish and Town Councils would still receive the neighbourhood share of the Levy as it is important that some of the levy is spent to mitigate the clear local impact that any development will have.

The Government needs to ensure that the money is spent of infrastructure only and that it supports the impact that development would have on an area as that was what generated the money and that is what will benefit the community the most. If there is fewer restrictions SDC is concerned that the money will not be spent where it is most needed.

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If the Government does decide that it wants to be more flexible over how Local Authorities could spend their CIL money, then Sevenoaks District Council request that authority be given to each Local Authority to determine how they spend that money and they decide on the priorities for spending.

In addition, as part of this new structure SDC would also still require the ability to part fund projects as there is not enough money currently in CIL to fully fund projects and cover all the infrastructure needs.

#### 25(a). If yes, should an affordable housing 'ring-fence' be developed?

[Yes / No / Not sure. Please provide supporting statement.]

Not sure.

There is such a need for affordable housing and in many Local Authorities there is an under provision. Any legislation that helps to protect the amount or provide an increase in affordable housing and retain it in perpetuity would be welcomed. However, this should not be at the expense of other infrastructure. SDC would not want to see affordable housing set as a priority as this would mean that the majority of the levy would be spent on this, without ensuring that other necessary infrastructure would be provided. Developers should understand that in providing affordable housing they will still be required to contribute to other forms of infrastructure that the site needs. SDC would ask that Local Authorities have the flexibility to determine what is appropriate for each site.

#### Other comments

1. Sevenoaks District Council is very concerned with the following statement:

*“in the event of a market fall, we could allow Local Planning Authorities to ‘flip’ a proportion of units back to market units which the developer could sell, if Levy liabilities are insufficient to cover the value secured through in kind contributions”*

Sevenoaks District Council would not support the possibility of ‘flipping’ units from affordable to market, as the affordable units would then be lost. Affordable housing units are much needed in our District as we have over 800 families on our housing register and a great need for socially rented units. Therefore, any proposal to reduce the amount provided especially on site would not be supported. Even if the levy is insufficient to cover the provision of affordable housing, on site other options should be considered first such as providing payment in kind or providing options for Affordable Housing providers to buy the stock or amending the type or size of the

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housing should all be considered before the housing is lost to market housing.

If the Govt were to implement this option, they would need to define what they consider to be a Market Fall and at what level they would consider that the developer could sell them at market level. It would also be appropriate that to determine when the 'flip' could occur. SDC would suggest that this occurs before the properties are sold or occupied, as this would put Local Authorities and Housing providers in a difficult position. SDC consider the option to revert back to market housing can only occur once much more detail has been provided in regard to definitions and stages at which this can occur. The Govt should provide clear restrictions to ensure this only happens in extreme circumstances and not on every site.

2. Sevenoaks District Council would also ask that clear definitions should be provided in this context as to what affordable housing is. What types the Govt consider there are and provide clearer guidelines as to how these can be retained.
3. SDC also note the comments made in regard to publically owned land and the Government strategy on how land owned by Government can be managed and released more effectively.

It is understood that much of this type of government and publically owned land is likely to be highly valued open spaces or recreational land which need to be protected. SDC would therefore request that these areas need to be protected in any policy that is drafted in regard to publically owned land.

Whilst SDC supports this proposal in principle, we are concerned that this strategy could lead to publically owned land just be taken over. It would be helpful if the Govt could provide more details in regard to these initiatives and their intentions as SDC would not want to use well used and profitable land, nor would they want to jump through a number of hoops to keep it. SDC would welcome more clarification to confirm that local authorities will still have authority to determine how these sites are used.

4. SDC are also concerned that in the Government's insistence that the SME builders are being disproportionately penalised by the current CIL system. No evidence has been provided to support this claim. In this highly restricted District (93% Greenbelt), where many of the developments are on the small side and where we therefore probably have a higher than average proportion of SME builders, we also have no evidence that this is preventing them from developing sites or that they are being unfairly penalised against

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larger developers. SDC would therefore like to see clearer evidence to support this claim and if this is provided how these new proposals specifically address this issue.