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SCRUTINY COMMISSION – 30TH AUGUST 2006

REPORT OF THE DIRECTOR OF COMMUNITY SERVICES

DEVELOPER CONTRIBUTIONS IN LEICESTERSHIRE

Purpose of Report

1. To advise Members of the progress made on the review of the County Council's supplementary planning guidance for developer contributions towards County-wide services and infrastructure. The draft document is currently the subject of public consultation and the Commission is invited to make comments on the consultation document.
2. A copy of the consultation document is attached at Appendix A.

Background

3. It is essential that the cost of infrastructure and community facilities arising from new development (both major schemes and the accumulative impact of smaller schemes) be secured from the appropriate developer contributions. This is a valid and important source of funds (both financial and 'in kind') towards the essential service provision of the County Council.
4. The County Council (along with several of the District Planning Authorities [DPAs]) adopted its original supplementary planning guidance in March 2001, and established the present protocol for consultation between the County and District Planning Authorities. This guidance needs to be updated, in the light of changes in circumstances, revised calculations and experience since adoption. It is intended that the countywide document should provide a consistent approach across Leicestershire, and be adopted by each DPA, in support of its own supplementary guidance for its own services.
5. The Cabinet has made formal responses to various Government consultations on the review of the developer contributions regime, including the most recent one about Planning Gain Supplement (see below). Any subsequent changes to the system will be addressed at the appropriate time, but in the meantime there is an urgent need to review existing countywide guidance, especially given the deferment of any fundamental changes to the current regime.

Timetable For Decisions

6. The formal consultation period on the draft document runs for any 8 week period between 31st July and 25th September 2006, including the current consideration by the Scrutiny Commission. It is intended that any comments from the Commission and/or consultees should be considered at a future meeting of the Cabinet, potentially at the meeting on 31st October (although the precise date will be subject to progress on the report and the scale of responses).
7. It is hoped to present the Cabinet's formal recommendation on a final document to Council on 6th December 2006 (see 'policy framework' below), after which it would become adopted County Council policy and be available for adoption by the individual district planning authorities. The approval of Council is required as the document falls within the plans and strategies forming part of the County Council's Policy Framework by Local Choice (Schedule 2 to Article 4.01 of the Constitution).

Policy Framework and Previous Decisions

Strategic Policy and Guidance

8. The approved Leicestershire, Leicester and Rutland Structure Plan includes a provision in Strategy Policy 11 that 'developers should meet the requirements for, and costs of, relevant infrastructure and facilities and other resources required to support the development'. The adopted Local Plans of the individual DPA's also include policies that set out the same requirement.
9. The County Council adopted its own 'Requirements for Developer Contributions' in March 2001 as interim supplementary planning guidance. This guidance was prepared in conjunction with the District Planning Authorities in Leicestershire and has been adopted by a number of them as well. The document sets out the background to securing developer contributions, the types and extent of contributions (including DPA requirements), and established the present protocol for consultation between the County and District Planning Authorities.

Government Consultations

10. The Cabinet agreed its response to the original Government consultation on planning obligations in March 2002 (*Green Paper – Planning: delivering a fundamental change*). At that time the County Council expressed concerns about the implementation of a new regime, especially the implications of any 'tariff' based scheme on the provision of County Council services and infrastructure.
11. A subsequent ODPM consultation paper on '*A New Approach to Planning Obligations*' was published in November 2003, which raised the concept of 'optional planning charges' (OPC). The CC expressed a number of concerns about this possibility, whereby developers might select to pay a fixed tariff in lieu of negotiated contributions for specific facilities.
12. The County Planning Authority responded to a consultation of draft revised Circular 1/97, published in January 2005 and setting out interim changes to the

system for negotiated agreements. Subsequently, revised Circular 05/2005 on Planning Obligations (05/2005) was published in July 2005. This Circular sets out the basis for securing appropriate developer contributions towards public services and re-iterates the 'necessity' test on which all requirements should be assessed (i.e. the necessary mitigation of the impacts on community services and infrastructure arising from a particular development)

13. At its meeting on 14th March 2006, the Cabinet endorsed the views of the County Planning Authority on ODPM consultation paper on '*Planning Gain Supplement*' (December 2005). The County Council expressed serious concerns about the proposed re-allocation of PGS funds through the extended Community Infrastructure Fund (CIF), over which it will have little or no control. The findings from that consultation exercise are still awaited. At the same meeting, the Cabinet resolved to progress towards the updating of current CC supplementary guidance on 'Requirements for Developer Contributions'.

Latest Government advice and Audit Commission Reports

14. The Department for Communities and Local Government has just published its Good Practice Guide for section 106 Planning Obligations, as foretold in earlier consultations on circular 05/2005.
15. Coincidentally, the Audit Commission has published 3 consecutive reports on 'improving performance on Section 106 agreements' in the last month. As expected, these deal primarily with the efficiencies of local authority processes and value for money (VFM), rather than the scale and nature of contributions. The reports are targeted at planning departments, chief executives and councillors, dealing with the following issues:-
 - Securing community benefits through the planning process;
 - Route map to improved planning obligations; and
 - Corporate awareness checklist
16. In many respects, the County Council's existing procedures and proposed review document meet the recommendations in these latest publications, insofar as they promote the formulation of detailed policy guidance and secure the commitment to appropriate contributions. When it comes to the implementation of the system, the recommendations identify the vital importance of efficient and effective management and monitoring of the subsequent contributions and related projects, embracing a corporate response to aspects.
17. The County Council will need to keep under review its corporate approach to current activities and data management systems, which in turn could bring long-term benefits to the transparency, efficiency, understanding and financial returns from the contributions regime.

The Draft Consultation Document

18. The draft supplementary guidance sets out the purpose of the document, the policy background and its intended status in securing appropriate contributions from developers. It deals with the whole range of countywide services. Where appropriate it sets out the latest formulae for calculating the levels of contribution

(which will be updated on an annual basis). In many situations, it will be necessary to seek contributions on a 'site-specific' basis.

19. For the sake of consistency, the requirements of other countywide agencies are set out in the document, although these will normally be sought by the DPAs. The document also provides guidance of standard legal agreements and revises the protocol for consultation between County and district planning authorities.
20. The document places emphasis on pre-application discussions between developers and the County Council, as promoted by the Government. The guidance in the document should help to facilitate such negotiations and ensure that appropriate contributions are secured towards the Council's services and infrastructure facilities.
21. However, this activity is resource-hungry and without proper support there is a risk that the full benefit of contributions for County Council services may not be secured. The draft Supplementary Planning Document (SPD) suggests a contribution from the process to support the implementation of the policy.

Proposed Consultation Process

22. Public consultation on the draft document commenced on 31st July 2006 for a period of 8 weeks. This has included press notification, publication on the website, and media promotion. Direct consultation is being undertaken with the following:
 - County Council and other service providers contributing to the document;
 - District Planning Authorities in Leicestershire;
 - Adjacent unitary authorities and County Councils;
 - Association of Parish Councils;
 - Statutory undertakers and service providers;
 - GOEM, regional bodies and other Government agencies/quangos;
 - Business interests and representative bodies;
 - Community associations;
 - Developers and housebuilders federation;
 - Professional bodies.

Other Implications

23. The Planning and Compulsory Purchase Act 2004 requires that all local development documents, including supplementary planning documents, are subject to a Sustainability Appraisal (and, where appropriate, a Strategic Environmental Assessment). It seems unlikely that the latter will be necessary in the context of guidance on developer contributions. However, if the individual DPA's intend to adopt this County-wide document as formal supplementary guidance, then an SA will be required.
24. The County Council is not likely to have a 'saved' Structure Plan after 2008, when the document will be replaced by the Regional Spatial Strategy. Therefore, given the likely time in which the final document will be 'adopted', there would appear to be little benefit in pursuing a formal SA at this stage for County Council purposes.

25. However, there would be advantages in establishing a 'common' approach to a formal SA that supports the County-wide document, which would be undertaken in partnership with the various DPA's. This process would be informed by the current consultation process and could be given 'ownership' by each of those authorities.

Recommendations

26. It is recommended that Members are asked to consider the report and any response that they may wish to make to Cabinet and County Council.

Resource Implications

27. The legal framework for planning obligations provides the opportunity to secure significant contributions towards County Council services and infrastructure, both at present and in the future. It provides the means by which the additional impacts and demands arising from new development can be funded through the planning process. These can be provided in the form of financial payments and/or direct infrastructure facilities.

28. Contributions to the administration of the developer contribution regime are being requested.

29. The Director of Resources has been consulted on the resource implications section of the report.

Equal Opportunity Implications

30. The security of necessary infrastructure and service facilities has benefits for all sections of the community and developer contributions seek to mitigate against any potential disadvantages arising from the impact of new development.

Circulation Under Sensitive Issues Procedures

None

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Background Papers

Leicestershire County Council: 'Requirements for Developer Contributions' (March 2001)

Green Paper '*Planning: delivering a fundamental change*' (December 2001)

ODPM Consultation paper on '*A New Approach to Planning Obligations*' (November 2003)

Barker Review on Housing Supply (*Delivering Stability: securing our future housing needs*), (March 2004)

Consultation and Replacement Circular 05/2005 – Planning Obligations – issued in July 2005

Government Consultation Paper on Planning Gain Supplement (December 2005)

Cabinet reports of March 2002 and March 2006

DCLG: Good Practice Guide for dealing with Section 106 Planning Obligations (August 2006)

Audit Commission: 3 complementary reports on improving performance on Section 106 agreements (August 2006)