CCN COUNTY COUNCILS NETWORK	Submission to Housing, Communities and Local Government Committee **Inquiry into Land Value Capture** **March 2018**

Executive summary

The County Councils Network (CCN) represents 37 English local authorities that serve counties. Our membership includes both county councils and county unitary authorities. County councils play a vital role in delivering sustainable development through delivering and managing physical and social infrastructure from roads to education and social care.

Following the announcement of this inquiry, CCN placed a call for evidence to our membership. The evidence from this is clear that counties have serious concerns around their ability to fund infrastructure. Counties face severe funding gaps and are not able to deliver even the essential infrastructure to support their communities.

This is due to a number of reasons, including the introduction of the Community Infrastructure Levy and pooling restrictions on Section 106 agreements; lack of transparency and consistency in viability assessments; and a lack of joined up working in two-tier areas.

This submission sets out five recommendations that we believe would help to alleviate existing funding pressures, reduce funding gaps and make the system fairer and more transparent. These include:

- Amend legislation to remove Section 106 pooling restrictions.
- Standardise the methodology and report format of viability assessments.
- Implement recommendations outlined in the CIL review.
- Allow counties to take control of the contributions in the areas that they provide. In particular allow counties to implement the strategic infrastructure tariff.
- Encourage the use of review mechanisms in Section 106 agreements.
- Mandate for better joined-up planning for housing and infrastructure between district and county councils through strengthening the Statement of Common Ground.

Introduction

1. The County Councils Network (CCN) represents 37 English local authorities that serve counties. CCN's membership includes both county council and county unitary authorities who serve over 25m people (47% of the population). CCN develops policy, shares best practice and makes representations to government on behalf of this significant proportion of the country outside of the big conurbations.

2. CCN is a member-led organisation which works on an inclusive and all party basis. This submission has been developed in close consultation with county and county unitary

authorities, following a call for evidence from member councils. Evidence from this has been included throughout.

3. **CCN welcomes the opportunity to input into this important inquiry. Alongside our written response, CCN would welcome providing oral evidence to the committee given the unique nature of the issues we raise.**

The county context

4. Our members bear differing planning responsibilities under existing planning regulation. Crucially, county councils lead on the provision of infrastructure, flood risk and on economic development that supports housing and other developments in district local plans. CCN's 10 county unitary members are responsible for both development planning and infrastructure delivery.

5. Counties share central government's ambition to build high quality and the appropriate quantity of new homes to support the nation's economic and population growth over the foreseeable future. Not only is this essential to ensuring new generations of families have appropriate housing, but also tackling intergenerational unfairness. Providing physical and social infrastructure is also vital in ensuring that development supports inclusive economic growth and the competitiveness of our country.

6. However, county areas face a housing crisis of their own. Last month, data showed that house prices in county areas rose 5.9% in 2017, compared to 2% in London and 4.9% in metropolitan areas and cities. The average county house price now stands at £262,390; some £100,000 more than in the cities, and is rising at a faster rate. House prices in county areas are now nine times average annual earnings and as high as 12 times in southern counties. At the same time, the percentage of affordable homes delivered in shire counties is failing to keep pace with other parts of the country. Since 2011, on average, 26% of all net additional homes in counties have been classified as affordable. This compares to 44% in London and 34% in urban metropolitan areas.

7. CCN's member councils are keen to provide additional housing where required, but it is clear that an effective means of funding suitable infrastructure, and an inclusive role for counties in strategic planning, will be key to achieving this. It is clear that, as the tier of government responsible for local infrastructure delivery, counties are crucial to delivering increased levels of housing. However, the disjointed system of planning in two-tier areas leaves a gulf between planning and infrastructure, and is of increasing concern for communities.

8. Land value capture plays a vital role in securing funding for the infrastructure that all of our members provide, but as we set out further on in this response, our members face significant funding gaps for infrastructure from developer contributions. In an ever increasingly fiscally challenging environment for local government, and particularly counties, status quo is not an option.

9. As local authorities are under increasing pressure to deliver homes, our research has shown that many authorities often have to make a choice between attracting developers to submit applications for new homes, whilst relaxing the expected contributions in order to make development viable; or implementing developer contributions systems which risks development becoming unviable.

10. In addition, in two-tier areas the lack of synchronised working and lack of statutory duties on councils to work together means that county councils are often a recipient of the developer contributions system rather than playing a proactive role in its rate-setting, negotiation and collection within the county and adjacent local authority boundaries. CCN has long called for better joint working across two-tier areas and this was a key message coming from our submission to the *Planning for the right homes in the right places* consultation.

11. Recently, CCN and a number of other organisations have come together to urge the Secretary of State to strengthen the Statement of Common Ground to mandate joint working across the tiers of local government in order to better integrate planning and infrastructure decisions and funding.

12. Our response to the specific questions outlined in the call for evidence can be found below.

Are current methods, such as the Community Infrastructure Levy, planning obligations, land assembly and compulsory purchase adequate to capture increases in the value of land?

13. It is clear from our research that current methods are not adequate to capture increases in the value of land. Despite many of our member authorities having non-statutory infrastructure strategies that should help to create certainty, all of our member authorities who responded to us have serious concerns over their ability to fund infrastructure both immediately and in the future.

14. The severity of this infrastructure funding crisis varies across the country, but all of our members have funding gaps:

    - In Shropshire Council, background work informing their CIL identified a need to fund strategic infrastructure improvements amounting to £400m in 2011, with a funding shortfall of £385m. At present, the shortfall is £375m and it is projected to be £345m in 10 years. To put this into context, the authority has calculated that in line with current housing need, around £18,000 per home is required in order to fund necessary infrastructure. At current rates, the actual levels of contributions equate to £1,800 – just 10% of required funding.
    - In North Yorkshire County Council, the estimated income from CIL receipts is £43.6m, with a funding gap of £289m.
    - Wiltshire Council estimates that the current cost of their regulation 123 list projects would be £150m over the next 10 years. As of November 2017, the funding collected through CIL was around £3.4m.
    - East Sussex County Council states that, in some instances, the infrastructure gaps to fund required infrastructure projects can be as much as 50% of the cost.
    - Northamptonshire County Council states that they currently have an infrastructure funding gap of £25m, and over the next five years, an estimated funding gap of £350m.
    - Through their Greater Essex Growth and Infrastructure Framework, Essex County Council has identified a funding gap of £4.4bn – meaning that they only have the means to deliver around 57% of required infrastructure.
    - Dorset County Council estimates a funding gap of £600m across the plan periods of their respective districts local plans.

15. For our members, there are a number of reasons behind these sustained funding gaps, mainly related to the performance and interactions of the existing system of developer contributions, detailed below.

Community Infrastructure Levy

16. The introduction of the Community Infrastructure Levy has had varying effects across the country. Across many county areas it has had limited take-up, with some district councils proactively choosing not to prepare a charging schedule in order to bring forward more housing development.

17. This means that many authorities rely on the use of Section 106 in order to fund infrastructure projects. However, the pooling restrictions as introduced by the legislation, means that authorities are only able to pool five Section 106 contributions towards a piece of infrastructure. This is having significant consequences on local authorities' ability to fund required infrastructure. Some of our members also cited the administrative burdens of keeping on top of the pooling restrictions as an issue which costs them precious officer time which might be better deployed elsewhere.

18. Finally on pooling, this can have unfair consequences. An authority may have a number of developments coming forward that would support a piece of infrastructure, but once the sixth scheme comes forward a developer cannot legally contribute to it. This unfair system leads to some developers paying less contributions than those before it, whilst still adding to pressures that new development can bring.

19. In areas without CIL, the pooling restrictions also mean that contributions cannot be used to provide unusually large items of infrastructure to unlock development. At a time when the Government is encouraging authorities to consider delivering homes at scale through garden villages and urban extensions, the primary means to deliver infrastructure can hold such development back.

Viability process

20. Our members have cited the viability process as a key reason that the existing land value capture methods are failing. The introduction of the viability test in the National Planning Policy Framework in 2012 has paved the way for developers to negotiate their contributions.

21. As competition for land is fierce, it is landowners who often benefit most from the uplift in land value. Developers and land agents can work against each other to increase the bids for land, knowing they can negotiate their contributions through Section 106 further down the line, compensating for the increase in land value. 'Drip-feeding' homes onto the market then keeps house prices stable, and allows the developer to make a profit too.

22. In addition, the lack of transparency in both the methodology of viability assessments and in their publishing adds an extra layer of complexity when it comes to determining planning applications. Often it is only the officers dealing with a planning application who has access to the reports, not the committees who are often making the decisions.

23. Our members have cited that agreeing a methodology to calculate benchmark land values as one of the most frequent disagreements they have with developers. The lack of a consistent methodology has meant that the viability process has become more art than science, leading to a patchwork of differing outcomes across the country. This again is

costly and time consuming as authorities, who often don't have enough expertise in house, have to appoint external consultants to act on their behalf.

Regional variations

24. The current system of developer contributions has had differing impacts across the country. In areas where land values are lower, authorities have to exercise caution over the levels of contribution they can expect to receive. As expected land values are already low, the amount to negotiate is also low, and can cause development to become unviable. However, there are risks in setting rates low, as many of our members have found, as this leads to even larger funding gaps. In addition, this leads to higher levels of funding in areas with higher land values, and therefore an unequally distributed system across the country. This goes against the Government's plan to encourage more equal economic growth across the country as outlined in the Industrial Strategy and unfairly favours areas that has higher land values.

25. Areas of the country that have a high proportion of brownfield land must also exercise caution, as remediation is often costly and additional financial burdens such as developer contributions can make development unviable.

Joined-up working and distribution of funds

26. One of the biggest frustrations our county members face is the lack of statutory input they have in both the preparation of policy documents concerning developer contributions, as well as the mechanisms by which funding collected is distributed in two-tier areas. There are also no rules or guidelines on apportionment of funding, and county councils have no control over how district councils spend contributions.

27. The only area of developer contributions that counties are consultees of is regulation 123 lists when charging authorities are preparing CIL charging schedules. This disjointed approach leaves many county areas unable to input into draft charging documents, rate setting and prioritising how contributions are going to be spent.

What new methods may be employed to achieve land value capture and what examples exist of effective practice in this area, including internationally?

28. Feedback from our members has suggested a range of options which could help to achieve better land value capture, allowing for a fairer system and delivering more sustainable development. These are detailed in our recommendations below:

Recommendation 1: Amend legislation to remove Section 106 pooling restrictions.

29. This would allow local authorities without CIL to pool more than five contributions to a piece of infrastructure and help to bridge funding gaps. It would also have the benefit of allowing authorities to pool contributions to unusually large pieces of infrastructure to unlock land for development.

30. Whilst we recognise that the Government is proposing to lift pooling restrictions in some areas in their latest consultation 'Supporting housing delivery through developer contributions', we believe that the criteria proposed still penalises areas where many authorities do not have CIL in place. We believe this needs to go further and apply to all authorities who can justify why they have chosen to not apply CIL, instead allowing them to pool contributions from Section 106 agreements.

Recommendation 2: Standardise the methodology and report format of viability assessments.

31. This should make it clear that housing and infrastructure requirements are factored into land values so that infrastructure and affordable housing can be delivered. A standardised methodology and report format will make understanding the viability process much clearer and fairer across the country, and less easy to manipulate the system.

Recommendation 3: Implement recommendations outlined in the CIL review.

32. Our members broadly welcomed the recommendations of the CIL review, particularly the recommendation that the existing CIL regime should be replaced with a hybrid system of a broad and low level Local Infrastructure Tariff (LIT) and Section 106 for larger developments. This should implemented as soon as possible.

33. A lower LIT would be able to be supported across a wide range of sites, and the use of Section 106 on larger sites would allow for bespoke developer contributions packages to be negotiated.

Recommendation 4: Allow counties to implement the strategic infrastructure tariff as well as combined authorities with mayors.

34. The CIL review recommended that Combined Authorities should be enabled to set up an additional Strategic Infrastructure Tariff (SIT) allowing contributions to be collected for bespoke large scale infrastructure projects and assist in forward funding for infrastructure.

35. We wholeheartedly agree with this approach, but believe that this should be extended outside mayoral areas to county councils to ensure that all areas of the country can forward fund infrastructure and encourage sustainable economic growth. Allowing county areas to adopt a SIT would alleviate the existing issues around fund setting and distribution giving counties control for transport infrastructure, education, and social care.

36. This would also assist in areas with lower or differing land values, as a SIT could be implemented allowing many developments across a broader geographical area to contribute to a specific piece or pieces of infrastructure.

37. We would also encourage Government to explore the matter of when the tariff would be paid, including a system that would see developers pay the tariff on receipt of planning permission in order to fund infrastructure upfront rather than deliver it after development has been implemented. Failure to pay at this point could then see the sum rise in line with the rate of inflation in order to incentivise earlier payment.

Recommendation 5: Encourage the use of review mechanisms in Section 106 agreements.

38. Review mechanisms can be written into Section 106 agreements allowing authorities to review the viability position once a development is underway and/or has been completed. These allow things like actual sales revenue and actual cost of development to be reconsidered allowing further uplift in land value to be captured if the position is difference to the initial viability study.

39. This also has the benefit of allowing developers to reduce contributions if economic conditions worsen and sales are lower than forecasted, or if development costs are higher than forecasted, making it fair to both parties.

Recommendation 6: Mandate for better joined-up planning for housing and infrastructure between district and county councils through strengthening the Statement of Common Ground.

40. The Statement of Common Ground (SOCG) announced in the Housing White Paper offers a real opportunity to bring together the different district and county council responsibilities. In two-tier areas, the SOCG could underpin the integration of infrastructure, economic growth, education and social care functions with housing and planning functions, which then feeds into the local plan. This would allow all authorities to work together to identify the required infrastructure and its sustainable management across the local authority areas, and indeed across county boundaries where necessary, and develop a clear strategy for collecting contributions that allows that infrastructure to be delivered.

41. Promoting the alignment of planning for housing and infrastructure at higher spatial levels will assist in meeting the economic challenges that county areas face, increasing high value jobs and increasing productivity and rebalancing the economy meeting the aims of the Government's Industrial Strategy and promoting sustainable growth across the country.

What are the possible advantages and disadvantages in adopting alternative and more comprehensive systems of land value capture?

42. Any change in the planning system has the potential to cause uncertainty and delays whilst they are established and tested through the system. However, given the importance of infrastructure and its contribution to sustainable development, it is vital that government shows strong leadership in this area and makes changes that will have long term benefit to communities.

What lessons may be learned from past attempts to capture the uplift in value?

43. Many of our member councils were supportive of the regime prior to the introduction of the Community Infrastructure Levy, whereby Section 106 and 278 agreements were the primary mechanisms to capture land value and provide adequate infrastructure. This is due to the fact that contributions could be negotiated on a site by site basis. If the recommendations of the CIL review were implemented, the regime would return to a similar system.

44. The new approach to viability as introduced by the Greater London Authority through their Affordable Housing and Viability Supplementary Planning Guidance also offers some lessons over the developer response to certainty. Setting a level of affordable housing threshold which, if a developer meets, means that viability will not be scrutinised is an intervention which has been broadly welcomed by developers in London. It will add certainty, and means that both developers and local authorities save money and time in progressing planning applications. This regime does allow developers to have viability tested if they believe the threshold would make development unviable, making it fair.

Conclusions

45. In two-tier areas, county councils play a vital role in delivering sustainable development and communities with responsibility for infrastructure such as roads, education and social care. Our response has demonstrated that the existing processes of capturing land value are not adequate, and we urgently need to reform the way developer contributions are collected.

46. New homes bring increased pressures on existing services and infrastructure. Developer contributions, secured through the uplift in land values once planning permission for development has been granted, is vital in mitigating these pressures.

47. As demonstrated, all of our county authority members who responded to our survey face severe funding gaps which, in the current regime, are only set to get bigger. Our submission has set out five recommendations that could be implemented to improve and simplify the system. Making the viability process clearer and more transparent will also assist in better capturing land value to provide the infrastructure needed to support our communities now and futureproof them to encourage growth across the country.

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