

Planning Reform and Developer Contributions in Northern Ireland

Date: 1 October 2009

Summary of Paper

This paper focuses on the Developer Contributions chapter of the DoE's consultation document "Reform of the Planning System in Northern Ireland".

It is positive that the consultation paper clearly accepts the principle of developer contributions but deeply disappointing that its description and analysis of A40 and CIL are inadequate and unbalanced. The Federation believes the chapter is flawed because:

- Article 40 (A40) and Community Infrastructure Levy (CIL) are incorrectly presented as alternatives
- The pros and cons of the two systems are not fairly presented
- No consideration is given to the desirability of achieving mixed tenure housing development.

The Federation believes Article 40 should be the normal means of securing affordable housing (including social housing) through Developer Contributions and CIL should be used when it would be impractical to achieve the housing objective through Article 40.

Introduction

The Northern Ireland Federation of Housing Associations (NIFHA) represents registered and non-registered housing associations in Northern Ireland. Collectively, our members provide 30,000 good quality, affordable homes for renting or equity sharing. Further information is available at www.nifha.org

Background

Article 40 is N Ireland's equivalent to Section 106 (S106) of the planning legislation for England and Wales. Scotland has a similar clause. This legislation allows the planning authority to enter into legally binding agreements which have the effect of rendering acceptable planning applications that otherwise would be unacceptable in planning terms. The planning consent and the agreement are inter-dependent and are binding on all subsequent owners of the land. This approach can be more flexible than relying on planning conditions.

A local example is the Forestside Shopping Centre on the south Belfast ring road. Sainsbury's proposed to redevelop the old Supermac shopping centre and greatly intensify its use. The road system could not have coped with the extra traffic generated so planning consent could have been refused. But Sainsburys were prepared to enter into an A40 agreement to improve the road junctions at its own expense. This rendered the planning application acceptable and consent was granted.

Many English and Welsh planning authorities adopted Local Plans that included policies for the provision of a variety of housing types and tenures. Over the last decade they have increasingly used S106 as a key method of implementing those policies through housing contributions made by private developers.

A40 has not yet been used for the provision of affordable homes in N Ireland but the Semple report on affordable housing reflected a strong political consensus that it should be. We also note that the consultation document says an average of ten A40 agreements are concluded each year in Northern Ireland so useful experience must have been gained in the non-housing sphere.

At a meeting on 13 August 2009 we were glad to hear the Minister for Environment confirm that he has instructed his officials to liaise with their counterparts in the Department and Social Development to progress the use of A40 in relation to affordable housing. Chapter 7 of the DoE consultation document is part of that process.

The Community Infrastructure Levy was written into English and Welsh law in 2008 and consultation is currently taking place on how it should operate.

The purpose of the CIL is quite different from S106. The CIL aims to recover from developers the “excess” cost of providing the new public infrastructure (e.g. water, sewers, roads, waste treatment facilities, public open space) necessary for local and sub-regional development. The “excess” cost is the estimated total cost of new infrastructure less planned public expenditure on it. The CIL consultation document outlines how the “excess cost” should be calculated, fairly apportioned between developers and collected by the authorities. Affordable housing could be included in the definition of “infrastructure”.

Paragraph 8 of the Summary of the CIL consultation document unambiguously states “However, affordable housing provision should continue to be provided through the existing system of planning obligations, not through CIL”. The two key reasons for this policy are given in paragraph 23 of the same Summary:

- “The Government’s policy is that, in order to secure mixed communities, affordable housing should where possible be provided in kind and on the development site.
- Planning obligations provide the facility to tailor affordable housing contributions to the particular circumstances of the site.”

The CIL consultation document explains that nearly all development should be subject to S106 or CIL but exceptional circumstances may arise when one of them should be “topped up” by the other so that society achieves a contribution that is fair and reasonable.

In NIFHA’s opinion, the above-mentioned arguments are just as valid in Northern Ireland as they are to England and Wales.

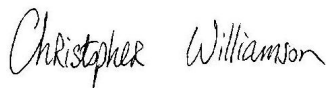
The Federation is encouraged that the Minister and the NI consultation paper on planning reform clearly accept the principle of developer contributions but we are concerned that the consultation paper's description and analysis of A40 and CIL are inadequate and unbalanced. We have five main criticisms:

1. The paper fails to mention that collecting CIL for housing developments would probably continue (and possibly increase) tenure segregation rather than reducing it.
2. The paper should not present CIL and A40 as alternatives.
3. The consultation paper should point out that implementation of CIL in N Ireland would take far longer than A40. Legislation and most of the policies necessary for implementation of A40 are already in place; nothing is currently available for CIL in N Ireland.
4. There is no assurance that all CIL money raised on housing development would find its way back into the housing budget.
5. The paper glosses over the immense difficulty of calculating the CIL in a fair and objective manner, especially when it would be collected from developments happening at very different times.
6. CIL depends on full coverage of up-to-date Development Plans but N Ireland is still sadly lacking in this regard. It will take many years to make up the shortfall.

Conclusion

The Federation and its members believe A40 and CIL are intended for different purposes and their roles should be complementary. We also recognise that a pragmatic approach must be taken to their implementation so that private development can still be undertaken profitably.

NIFHA and the housing associations it represents are more than willing to contribute to inter-agency discussions on this important and urgent matter.



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