

COMMUNITY INFRASTRUCTURE LEVY: DEMONSTRATING THE BENEFITS OF PLANNING GAIN TO BIODIVERSITY AND LANDSCAPE

POSITION STATEMENT BY WILDLIFE AND COUNTRYSIDE LINK

JULY 2008

Wildlife and Countryside Link (Link) brings together 40 voluntary organisations concerned with the conservation and protection of wildlife, countryside and the marine environment. Our members practice and advocate environmentally sensitive land management, and encourage respect for and enjoyment of natural landscapes and features, the historic environment and biodiversity. Taken together, our members have the support of over 8 million people in the UK and manage over 476,000 hectares of land.

Link broadly supports the introduction of the Community Infrastructure Levy and its potential to provide much needed funds to support protection and enhancement of biodiversity. In particular, we encourage charging authorities to give serious consideration to the provision and long-term management of high quality green infrastructure, which is currently under funded.

This position statement is supported by the following member organisations:

- Buglife – The Invertebrate Conservation Trust
- Butterfly Conservation
- Campaign to Protect Rural England (CPRE)
- Friends of the Earth
- The Grasslands Trust
- Herpetological Conservation Trust
- Royal Society for the Protection of Birds (RSPB)
- Open Spaces Society
- The Wildlife Trusts
- WWF - UK

1.0 Summary of key points

- The Community Infrastructure Levy (CIL) is intended to raise more funding for the crucial infrastructure that is needed to support new development.
- Link believes that CIL has the potential to make increased money available to support protection and enhancement of biodiversity, particularly for the provision of high quality green infrastructure, which is currently under funded.
- Whilst CIL has its benefits it must not completely replace the ability for local authorities and others to use Section 106 agreements. These have been crucial for the provision of mitigation and compensation from development and must be available to address site specific impacts.
- CIL should not be applied to developments by charities and other groups where money raised, particularly from visitor facilities, is essential for core conservation work which provides a vital public service.

- Charging authorities should begin thinking about and costing up what infrastructure will be required to support new development, including provision of green infrastructure.

2.0 What is the Community Infrastructure Levy?

The Community Infrastructure Levy (CIL) is an endeavour by Government to raise money from development to pay for essential infrastructure. CIL will be raised under a tariff system, with local and sub regional authorities (to be known as 'Charging Authorities') assessing what infrastructure is required to support new development in their area. This will be collated and applied across developments that come forward, usually as a set cost on the developer per new house built or square metre of commercial development. It is likely that CIL will be paid on the date of commencement of development. The money raised will be paid to a Local Authority to be spent on the infrastructure identified in the assessment.

Funding for infrastructure is currently provided partly through legal agreements, known as Section 106 Agreements or Planning Obligations. The power to use such agreements is taken from Section 106 of the Town & Country Planning Act 1990 and they are negotiated between the local planning authority, developers and others, to provide funding at various stages of the development for agreed infrastructure. Whilst the use of Section 106 agreements has had some success, particularly in delivering affordable housing, it has also been identified as a delay in the planning system due to the complex negotiations involved and has not raised as much capital for infrastructure as is currently needed.

Moreover, the capacity to negotiate Section 106 agreements varies greatly between local planning authorities, and recent research by the Department for Communities and Local Government (CLG) has identified that a significant proportion of the revenue raised has not been spent. It is envisaged that Section 106 agreements will continue to exist alongside the CIL although will have a more limited role, dealing only with the 'site specific' impacts of development (see below).

Draft regulations on how the CIL will work are currently being drafted by CLG and are expected in autumn 2008. The final regulations are due in spring 2009.

2.0 What opportunities does CIL hold for biodiversity?

Link agrees that all development, not just housing, should contribute to the provision of infrastructure and therefore CIL offers the potential to provide greater funding for important infrastructure, most importantly 'Green Infrastructure' (GI). We do not, however, believe that it is feasible to rely predominantly on new development to fund the provision of green infrastructure as a general approach. To do so would be to unduly hook provision of habitat, green and open spaces to development when many localities and regions require substantial restoration of habitat for its own sake and not because a development opportunity is being exploited.

The current context of the global 'credit crunch' and the downturn in the property market raises serious questions as to the viability of such an approach. Nor should the provision of GI benefits funded by new development be accepted as mitigation for environmental damage when such damage can and should be avoided.

GI, a term which encompasses a network of green spaces and other environmental features, is as essential to all new development as traditional 'grey' or 'hard' infrastructure such as roads, schools and hospitals. In addition to providing significant health, education and quality of life benefits, high quality green infrastructure promotes ecological connectivity through the creation of a network of interconnected spaces. This enables wildlife to traverse urban areas, thus meeting the need for mobility and building in resilience for wildlife habitats to adapt to the effects of climate change. Such connectivity will be crucial if the UK Government is to meet its international biodiversity commitments.

Part of the problem with expecting new development to contribute towards the provision of GI is that in practice there are often more politically pressing claims on infrastructure funding, such as affordable housing and 'grey' infrastructure. As a result only a small amount of infrastructure funding is made available for GI assets, which often leads to a short fall in quantity, quality and long term management arrangements, as demonstrated by the case studies below.

Case Study 1 - Lack of funding for Green Infrastructure

In South Essex, the RSPB has ambitions to create 930 hectares of high quality greenspace, rich in wildlife and accessible to increasing populations of people in this area of intense regeneration. Unfortunately funding for further projects is temporarily on hold until September 2008, when funding under the Thames Gateway Parklands initiative will begin. This will only provide £35 million for both greenspace and built heritage projects until 2011, and is far short of the 10% of all growth area funding desirable and which has been promised by Government. Neither does it currently include any provision for ongoing management costs.

At Fen Drayton Lakes, in the Cambridge sub-region, the RSPB has bought 391ha of former gravel workings to develop a new nature reserve. The reserve will be a greenspace resource for Cambridge and the new settlement of Northstowe. Although Fen Drayton has received a degree of public funding, there has been considerable uncertainty about the availability of funds and the allocation for the sub-region is nowhere near 10% of all growth area funding or what is necessary to deliver the Cambridge Sub-Region Green Infrastructure Strategy.

It is essential that Local Authorities recognise the importance of GI and habitat creation when costing up infrastructure assessments for new development. Green infrastructure has long been seen as the 'forgotten' infrastructure, which either misses out on funding completely or is left until the end of the development process and receives only what funding is left. It is necessary for developers, decision-makers and the public to think of GI and habitat creation in the same way as transport or other infrastructure issues.

With a proper assessment of need, CIL presents an opportunity to make greater funding available for GI and habitat creation in new development. Some authorities already have experience of using Section 106 agreements to provide both GI and biodiversity enhancement, particularly in areas where there is conflict between aspirations for development and important wildlife sites, as the example of the Dorset Heathlands below demonstrates.

One of the crucial issues for GI is that it is provided in advance or at around the same time as development begins rather than once development has been completed. This will help to give wildlife habitats the chance to establish and be colonised by a diversity of species. Link welcomes the suggestion that the CIL Regulations will include provision for the front funding of infrastructure which should make it easier for developers to provide well funded, quality greenspace.

When costing up infrastructure assessments, local authorities and other charging authorities should make use of existing policy and habitat opportunity maps that exist in Regional Spatial Strategies (RSSs) to help set out what GI might be required, particularly any that needs to be provided at a sub-regional scale. This is likely to require the involvement of Link member organisations and local planning authorities in the RSS process from the start to ensure that there is a robust and comprehensive assessment of GI need.

Case Study 2 - Mitigating the impact of housing on the Dorset Heathlands

South East Dorset supports a large area of lowland heathland, much of which is protected under the EU Birds and Habitats Directive for species such as Nightjar and Sand Lizard.

The Habitats Regulations stipulate the need for avoidance or mitigation of adverse impacts on these sites, including the projected 26,000 new homes in SE Dorset. In 2006, English Nature (now part of Natural England) informed local planning authorities in the area of the heathlands that the environmental impacts of additional developments within 400m of heathland sites could not be mitigated, and that, in the absence of any mitigation, they would object to any developments in the zone from 400m up to 5km away.

In 2007, Natural England, with the Local Authorities, Government Office (SW) and the RSPB, agreed an Interim Planning Framework (IPF) to provide a mechanism for mitigation of the impacts, using the Section 106 process. Projects were identified aimed at managing the impacts of development on the heathlands and providing suitable alternative natural greenspaces (SANGs) for residents to use instead of the heathlands.

Through a Section 106 agreement a levy is raised from every new residential unit within 5km of the heathland. The amount was based on a predicted number of dwellings to be built in the 3-year period of the IPF. So far £3 million has been raised and is being spent by the Urban Heaths Partnership to improve local greenspaces and to purchase SANGs.

The Section 106 mechanism has worked well as a way of raising the money needed to pay for projects, especially as it can then be banked then used as and when projects are developed. However, a question remains as to whether similar Section 106 agreements or CIL funds could be directed towards environmental benefits in cases where land is not subject to international wildlife designations.

Whilst the extra money that might be available will be important, funding will need to be appropriately allocated to all aspects of providing for biodiversity and GI. At present, developers are generally reluctant to provide for GI because these assets often need long-term management and adoption of features once development is completed on site. This problematic aspect of GI provision currently tends to be resolved through endowments or in-perpetuity payments. Funding for long-term management needs to be properly ring-fenced to ensure that it is only used for the purposes that it has been earmarked for.

The need for on-going expenditure to ensure the proper management of biodiversity must be considered carefully as CIL / Section 106 monies are unlikely to generate sufficient funding in perpetuity. Accommodating development by one-off payments at the outset risks storing up financial problems for the future if resources are going to be needed for managing GI (or other benefits) over anticipated lifetime of the properties once development is completed. Mechanisms, such as trust funds, or ground rent payments may be needed if the costs of environmental benefits are to be linked over time to any particular development project.

Link believes that CIL should not be used as a way of providing more funding for unsustainable infrastructure, such as a new road schemes. In our view, a package of

sustainable measures which includes sustainable transport options and green infrastructure is more critical to support growth.

3.0 Continued use of Section 106 for mitigation and compensation

Section 106 will continue to exist under the new arrangements and will continue to provide a source of developer contributions. Where an authority implements CIL, Section 106 will remain for measures that cannot be addressed through CIL.

The details of the relationship between CIL and Section 106 agreements have yet to be made clear. The Government has indicated, however, that Section 106 agreements will continue for the following areas: -

- Non-financial, technical or operational matters
- 'Site-specific' impacts of the development on the immediate area and where without mitigation development ought not be given permission
- Ensuring affordable housing provision

Section 106 agreements have been moderately successful in providing for the mitigation and compensation of sites where damage has the potential to occur from development (see case study below) and for affordable housing in rural areas.

Case Study 3 – Funding for mitigation and management

Cambourne is a recently completed development between Cambridge and St Neots comprising 5,000 homes and a business park. The Bedfordshire, Cambridgeshire and Northamptonshire Wildlife Trust has been involved in the planning of the site since the masterplan stage ten years ago to ensure that existing wildlife habitats were protected and large areas of new habitat created as part of the development.

A Section 106 agreement made on the grant of planning permission was used to fund both the initial ecological mitigation work, as well as the site's longer term management. The funds enabled the Wildlife Trust to set up its headquarters at Cambourne and to employ two staff to manage 80 hectares of land for nature conservation, including woodland, grassland, lakes, and Sustainable Urban Drainage System (SUDS) wetlands.

The site is now richer in wildlife than the surrounding agricultural land. Not only is the existing wildlife flourishing, but many new species have colonised and will continue to do so as the site matures.

A key issue for Link is ensuring that these provisions remain and that implementation of the CIL does not result in weakening the ability to provide adequate mitigation and compensation, or provision for rural affordable housing, through Section 106 agreements.

In particular, the issue exists where the impact of development is felt further away - for example, where a development affects a watercourse that feeds into an important wetland site. Link has sought clarification that these 'off-site' impacts could still be mitigated by a Section 106 agreement and Government has assured us that these provisions will remain. These types of 'off-site' impact will continue to be considered site specific 'on-site' impacts of the development for the purposes of how Section 106 agreements will to be used.

4.0 Exemptions from CIL

Link is concerned that the arrangements to exempt certain developments from CIL are overly restrictive and may capture a number of developments where the payment of CIL would be considered inappropriate. For example, many of Link's members carry out developments on their own reserves and estates that might be liable to CIL payment. Development of new visitor facilities are frequently undertaken, which include retail and commercial aspects, the profits of which go back into important conservation work.

This work, which is in the wider public interest, could potentially be affected by the need to pay CIL. Link believes that including such operations under the CIL criteria would have serious cost implications for its members and other charities. We will push to ensure that developments such as these are exempted from the need to pay CIL. Charities and community-based not-for-profit organisations with a remit to pursue public or community interests, such as Community Land Trusts, should be able to claim CIL rebates.

5.0 What should charging authorities be doing?

CLG advice is that charging authorities should start preparing for the CIL through the development of their Local Development Framework programme. This should include an early assessment of likely infrastructure requirements and a costing of what will be required to provide it. We encourage those authorities already using standard charges or who are thinking of using them to continue to do so.

Link suggests that as part of this process there should be a full assessment of green infrastructure and habitat creation requirements that will be needed. Authorities are being encouraged to develop their infrastructure evidence base and this should include identifying GI opportunities.

Link has some concerns that Local Authorities may struggle to bring forward the CIL successfully in terms of the skills and resources that they have, particularly in terms of carrying out the infrastructure needs assessment, valuing the CIL rate, and the enforcement and policing aspects of it.