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Planning and the Community Infrastructure Levy

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Planning is in turmoil: the new development plan system is refusing to bed down quietly and the new Planning Bill is losing many of its headline functions – there will be no local authority panel to replace the Planning Inspectorate over minor appeals; and there are severe doubts over the national Infrastructure Planning Commission. The remaining headline part of the bill – the Community Infrastructure Levy (CIL) – has had a new guidance note published (05 August 2008). But far from clarifying matters, it only muddies the water and makes its eventual implementation even more problematic.

The principle – that developments should contribute towards infrastructure costs – has been generally agreed and accepted by all parties, including for example, the British Property Federation and the Royal Town Planning Institute. The problem, as ever, is how to calculate this contribution and how to stop it from preventing development.

There are two key stages that will have to be undertaken before the Levy can be imposed:

- An agreed cost of infrastructure provision will have to be drawn up, and;
- A charging schedule will have to be prepared.

On the former, infrastructure is now taken to be anything which the local authority might think is appropriate – not just transport, but ‘schools and health centres, flood defences, play areas, parks and other green spaces’. But not affordable housing which will continue to be separately funded by planning obligations.

Having worked out these costs, a charging schedule will have to be prepared as part of the Local Development Framework. This schedule will be subject to ‘rigorous testing’; there is likely to be a public inquiry; and the local authority, while obliged to accept the Inspector’s report, are not obliged to implement it – they could prepare fresh proposals (and presumably go through the same process again).

But the key element is that the Levy is discretionary – local authorities ‘will be empowered, but not required’ to impose the levy. One can imagine therefore neighbouring and competing local authorities starting a bidding war based upon no or minimal contributions towards a desired project.

So where does this leave the major developers and house builders? At the moment just about all new development

has stopped so any proposals for charging on new development are academic to say the least. But – at some time in the future – development will pick up again. But the days of continuously increasing development values – the property world’s equivalent of the ‘NICE’ decade – are probably over for good. The problem is that this new Bill with its CIL proposals was drawn up in the NICE decade. In my view it will go the way of all government attempts to recoup this ‘betterment’, which is essentially what the Levy is: a long and complex series of papers, guidance notes and procedures which will eventually be ditched by an incoming Conservative government, along with the Planning Commission, which they are already committed to abandon.