**SECTION 106 AGREEMENTS – BETTER THE DEVIL YOU KNOW?**

*By Chris Gaunt, senior associate in Rosling King’s property team*

Currently in the Report stage in the House of Commons the Levelling-up and Regeneration Bill (‘the Bill’) proposes the replacement of both Section 106 planning agreements (S106) and the Community Infrastructure Levy with a National Infrastructure Levy (‘Levy’) which would be paid by developers to Local Planning Authorities.

Whereas a S106 is often the subject of detailed negotiation and is site-specific, the proposed Levy would be non-negotiable and would be charged by reference to Gross Development Value. The main aim being to reduce delays and uncertainty, allowing developers to “factor expenditure into the price paid for land” thus “improving affordable housing and infrastructure delivery”.

The intention is for the Levy to differ from the Community Infrastructure Levy as:

* It will be obligatory for the charging authority to charge the Levy;
* It will not be a viability informed floorspace-based flat rate;
* Affordable Housing will be funded and delivered through the Levy with the Local Planning Authority able to determine the portion of the Levy to be received as on-site affordable homes.

There does remain a number of questions yet to be answered:

* Will the Levy replace all financial contributions?
* The Government concedes that S106s will still be used in a narrowly targeted way but hasn’t indicated when they are expected to be used.
* If replacing S106s, what mechanism will be used to secure other obligations within a S106 – e.g. what about the allocation and location of affordable housing or mortgagee clauses?
* The intention is for affordable housing to be funded and delivered through the Levy, but how, if the development becomes unviable?
* Will Local Authorities be able, or indeed willing, to borrow against predicted Levy receipts for forward funding of infrastructure projects?
* How does a standard Levy affect development viability? Will there be different rates for different development locations – e.g. greenfield sites v city centre?

The S106 system has been criticised for being slow and overly bureaucratic, but what has been proposed in the case of the National Infrastructure Levy appears to raise more questions than answers. With the Bill still being considered, it may be some time before we get clarity on any future changes.

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