Property Week

HBF reveals councils are sitting on £2.8bn in developer contributions

By Lewis Berrill | Wed 13 September 2023

A massive £2.8bn in Section 106 and community infrastructure levy (CIL) payments from developers remains unspent in local authority bank accounts, according to research by the Home Builders Federation (HBF).

The report, based on Freedom of Information responses from 171 local authorities (half of all councils in England and Wales) found £1.4bn remains unspent, including over £280m specifically earmarked to provide affordable housing.

The HBF claims this figure is evidence of "a lack of capacity or unwillingness" to spend developer contributions, which it estimates could total £2.8bn across all authorities.

HBF executive chairman Stewart Baseley said: "Each year, developers contribute around £8bn to local authorities for the provision of local infrastructure, affordable housing and education, recreational and health facilities.

"Investment in new housing brings unrivalled economic and social benefits to communities, but too many of these advantages are going unseen by local people as councils fail to turn payments into the services, facilities and infrastructure that residents want.

"Not only is this a disservice to communities, but it undermines perceptions of homebuilding, allowing lazy negative perceptions to persist.

"In the face of a deepening housing shortage and cost of living crisis, it has never been more important to build new homes and local people should enjoy the benefits that can bring."

Authorities in major cities were found to be holding the greatest sums of unspent affordable housing contributions. Five of the 10 councils with the highest amounts of unspent contributions are in London, with Leeds, Oxford and Newcastle city councils also among the top 10.

Kensington and Chelsea had £20m unspent, more than any other council that responded.

Chris Gaunt, a senior associate in Rosling King's real estate group, told *Property Week* developer contributions often go unspent for long periods as the money cannot be invested piecemeal.

"The major stumbling block for getting S106 funding out of the door is often not a lack of desire from local authorities to spend it, but because there is not enough money in the pool to afford large housing or infrastructure developments in one go," he said.

"For the proposed Infrastructure Levy to be a success in delivering infrastructure, it is important that there needs to be minimisation of red tape around spending (no pooling restrictions, no time limits on spending). It is also worth bearing in mind that large, complex infrastructure projects can take many years to deliver so the five year spending window for S.106 contributions simply doesn't facilitate this."

Nicola Gooch, planning partner at Irwin Mitchell, added that there were a wide range of reasons why planning authorities struggle to spend S106 funding within agreed timescales.

"It may be that the project is reliant on other grant funding or resources, which do not come forward as anticipated, or even that the council's own financial position is such that they no longer have the people or expertise required to bring the relevant infrastructure forward," she said.

"None of this is the fault of the housebuilding sector, but it is an issue that is likely to become more acute, given the increased pressures on local authority finances.

"While unspent S106 funding is not good, S106 funds are at least ring-fenced by the terms of the relevant agreement, which usually place councils under a duty to either spend the funds on their intended purposes within a specified timeframe, or return them to the develop

"This does provide an incentive for the funds to be spent, and a fall-back position in the event that they are not.

"This is not the case with CIL or the proposed infrastructure levy [IL]. While CIL receipts are ring-fenced for infrastructure spending, there is no accompanying requirement for councils to spend the money either within a statutory timescale or at all.

"The current iteration of the infrastructure levy contains provisions enabling IL funds to be diverted to things other than infrastructure in certain circumstances, so they could be used to subsidise other council priorities, such as lowering council tax. This is clearly far from ideal."

Earlier this year, a coalition of councils, housebuilders, housing associations, charities and planners led by the County Councils Network (CCN), wrote to housing secretary Michael Gove urging him to scrap plans to replace the current developer contributions system.

Under Gove's proposed IL, developer contributions will be calculated once a project is complete, instead of at the planning permission stage.

Councils will also be given a new "right to require", so they can dictate how much of the levy is delivered through affordable housing on-site in new developments and how much is given in cash for other infrastructure.