



Open consultation

# Technical consultation on the Infrastructure Levy

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## Infrastructure Levy technical consultation questions – South response (as submitted via DLUHC consultation portal)

### CHAPTER 1 – FUNDAMENTAL DESIGN CHOICES

**Question 1:** Do you agree that the existing CIL definition of ‘development’ should be maintained under the Infrastructure Levy, with the following excluded from the definition:

- developments of less than 100 square metres (unless this consists of one or more dwellings and does not meet the self-build criteria) – **Yes/No/Unsure**
- Buildings which people do not normally go into - **Yes/No/Unsure**
- Buildings into which peoples go only intermittently for the purpose of inspecting or maintaining fixed plant or machinery - **Yes/No/Unsure**
- Structures which are not buildings, such as pylons and wind turbines. **Yes/No/Unsure**

Please provide a free text response to explain your answer where necessary.

#### **Council response:**

No, we consider that the existing CIL definition of ‘development’ should be reviewed for the new Infrastructure Levy

Through this review ‘developments of less than 100 square metres’ should be amended to; “minor development, less than 100sqm that forms an extension to a property”. The previous definition is confusing and leads to time-consuming disputes about what the 100sqm rule means.

The Government should also consider adding “any change in the use of an existing building or part of a building” to make these developments liable for the levy would be appropriate as the land value can be considerably increased on these.

Charges should also be levied for annexes and small buildings.

**Question 2:** Do you agree that developers should continue to provide certain kinds of infrastructure, including infrastructure that is incorporated into the design of the site, outside of the Infrastructure Levy? [Yes/No/Unsure]. Please provide a free text response to explain your answer where necessary.

**Council response:**

Yes, our council agrees that developers should continue to provide certain kinds of infrastructure, including infrastructure that is incorporated into the design of the site, outside of the Infrastructure Levy. It is important to establish what the new terminology included within the consultation document means. For example, on larger sites more infrastructure will need to be integral to the development of the site, for example, health centres and schools are integral to the development and its functioning as a healthy place. In our local authority area we would wish to see these delivered within our strategic sites (developments of 300 homes+), as they are at present.

For each development ‘integral’ will be different. Who will decide what is ‘integral and what isn’t? The developer or the planning authority? What happens when there is a disagreement? Who will make the decision in two-tier authorities? It is noted that there is an indication elsewhere in the consultation that this will be set out in the ‘strategic spending plan’ of each charging authority. This could address this issue, but it could be difficult to agree.

Paragraph 1.23 explains that levy receipts can also be passed to third parties such as county councils and gives the example of exploring

the possibility for developers to pay elements of the Levy through land payments if an area of the development, for instance, is to be used for building a school. Our council considers that there is a large risk that this type of project will not deliver what we are currently able to agree through a S106 agreement. It is also unhelpful that existing CIL/S106 terminology is being changed, this will make the system more difficult to implement as new debates will inevitably begin about what meaning to give to the new terms.

**Question 3:** What should be the approach for setting the distinction between 'integral' and 'Levy-funded' infrastructure? [see para 1.28 for options a), b), or c) or a combination of these]. Please provide a free text response to explain your answer, using case study examples if possible.

We consider (C) to be the most appropriate. In our authority we collect Section 106 on larger strategic sites (circa. 300 homes +) and smaller developments incur a CIL charge.

Our council considers that it is good that under the new system we can continue to collect contributions, however, we are very concerned about the process for 'levy funded' infrastructure spending.

Para 1.23 explains that receipts will be collected and paid to the third parties including water companies, county councils and others. This will involve a lot of work on the part of our authority to transfer this money to these providers and we don't have the resources to support this. Also, Oxfordshire has very high land values and buying land to provide all the types 'levy funded' infrastructure would be expensive.

We are further concerned about how we can guarantee that third parties will deliver the infrastructure when its needed. Flood risk, for example, also needs to be dealt with straight away. Not by third party delivery that comes later. For example, 'improvements to water and wastewater infrastructure networks' are not addressed by the authority. On large sites the developer will usually organise this with the water infrastructure provider, without the involvement of the Local Authority. Local authorities do not have the resources to provide this up front. Our council is concerned that this proposal is transferring the burden of infrastructure provision to local authorities. Whilst permissions might be granted quicker, it will result in a lag between development coming forward and then infrastructure being provided.

The local authority could incur debt in those cases where developers never pay and hold back the completion of the last house so that payment is further delayed.

**Question 4:** Do you agree that local authorities should have the flexibility to use some of their Levy funding for non-infrastructure items such as service provision? [Yes/No/Unsure] Please provide a free text response to explain your answer where necessary.

No, this could risk money going on infrastructure e.g. paying for staff at leisure centre, social care staff, health care staff. This will diminish what is needed for built infrastructure and affordable housing. The premise with the existing system is that S106 is used to support the physical infrastructure that is required. The levy should not be used for providing other services but should be able to be used to cover costs that can be capitalised under the delivery of infrastructure as is the case for CIL and S106.

**Question 5:** Should local authorities be expected to prioritise infrastructure and affordable housing needs before using the Levy to pay for non-infrastructure items such as local services? [Yes/No/Unsure]. Should expectations be set through regulations or policy? Please provide a free text response to explain your answer where necessary. **Policy**

Yes – local authorities should be able to prioritise infrastructure or affordable housing and they should be able to make that decision. However, it is of concern that this question is being raised, as it reflects the experiences our authority has with CIL/Section 106, that there will not be sufficient monies generated to meet all the needs that will be identified through the Local Plan and/or Infrastructure Delivery Strategy.

Under CIL, the neighbourhood allocation has a wider use than infrastructure delivery and can be used on “anything else that is necessary to support development” such as local services. We suggest that this freedom remains under the neighbourhood element but not extended to the strategic element.

**Question 6:** Are there other non-infrastructure items not mentioned in this document that this element of the Levy funds could be spent

on? [Yes/**No**/Unsure] Please provide a free text response to explain your answer where necessary.

No, these should only be included if directly related to the development. A good example of this in neighbouring district, Vale of White Horse is a community development officer post funded by development. That post has helped deliver community engagement with new residents and the delivery of infrastructure on the major development sites at Crab Hill and Grove airfield.

**Question 7:** Do you have a favoured approach for setting the 'infrastructure in-kind' threshold? [high threshold/medium threshold/low threshold/**local authority discretion**/none of the above]. Please provide a free text response to explain your answer, using case study examples if possible.

(d) Local authority discretion

This is similar to our current approach with CIL/S106, we identify strategic sites where we will use Section 106 and exclude these from CIL. In our local plan and in others across the country we would not have a site of 10,000 units, the thresholds included in the document are too high.

We would also query why no affordable housing is sought on S106 only routeway? The consultation is not clear on what is happening where a site only has a Section 106.

**Question 8:** Is there anything else you feel the government should consider in defining the use of s106 within the three routeways, including the role of delivery agreements to secure matters that cannot be secured via a planning condition? Please provide a free text response to explain your answer.

We need to ensure delivery of affordable housing for every major application that comes in. It is not clear from the consultation at what stage the affordable housing would be supplied or how affordable housing will be delivered. We are concerned that even less affordable housing is likely to be delivered through this new system.

We are particularly concerned that planning conditions are unlikely to be suitable for this purpose and do not have sufficient penalties for breach.

What will be included in a delivery agreement also needs to be better defined. It appears that this will act in a very similar way as S106 agreements would on smaller sites. How would a delivery agreement be different and how would it be beneficial?

## CHAPTER 2: LEVY RATES AND MINIMUM THRESHOLDS

**Question 9:** Do you agree that the Levy should capture value uplift associated with permitted development rights that create new dwellings? [Yes/No/Unsure]. Are there some types of permitted development where no Levy should be charged? [Yes/No/Unsure]. Please provide a free text response to explain your answer where necessary.

Yes, we agree that the Levy should capture value uplift associated with permitted development.

No, any development that increases land value should be captured.

**Question 10:** Do you have views on the proposal to bring schemes brought forward through permitted development rights within scope of the Levy? Do you have views on an appropriate value threshold for qualifying permitted development? Do you have views on an appropriate Levy rate 'ceiling' for such sites, and how that might be decided?

Yes, our council supports bringing permitted development rights within scope of the Levy. However, the threshold would need to be lower to capture PDs and the rate lower to keep them viable. However, this makes the administration of calculating what is due more complex as it introduces further layers. More guidance and advice are needed for this to be successful otherwise it will be difficult to implement this.

**Question 11:** Is there is a case for additional offsets from the Levy, beyond those identified in the paragraphs above to facilitate marginal brownfield development coming forward? [Yes/No/Unsure]. Please provide a free text response to explain your answer where necessary, using case studies if possible.



When we set our current charging levy our consultants (Aspinall Verdi) recommended we set different rates for greenfield and brownfield development. Councillors asked us to follow this up to maximise our rates. However, officers were concerned that it would be difficult to administer the charging schedule on this basis, as use of the terms 'greenfield' and 'brownfield' is problematic. For example, brownfield is not a 'use' in the planning system and it is not easy to define. In order to set differential rates for brownfield sites it is necessary that they are mapped for charging purposes. This would be challenging to administer as developers would likely argue that parts of their site were 'brownfield' to attract a lower levy.

We looked at several other authority CIL charging schedules and spoke to colleagues at other authorities. We found that those authorities who had considered this had subsequently had to abandon this because it is too challenging to bring in. We recommend that this issue is explored thoroughly by DLUHC within the context of the current CIL system with those local authorities that have considered it, before deciding this is the way forward.

**Question 12:** The government wants the Infrastructure Levy to collect more than the existing system, whilst minimising the impact on viability. How strongly do you agree that the following components of Levy design will help achieve these aims?

- Charging the Levy on final sale GDV of a scheme [Strongly **Agree**/Agree/Neutral/Disagree/Strongly Disagree/Unsure]
- The use of different Levy rates and minimum thresholds on different development uses and typologies [Strongly Agree/Agree/Neutral/**Disagree**/Strongly Disagree/Unsure]
- Ability for local authorities to set 'stepped' Levy rates [Strongly Agree/Agree/Neutral/**Disagree**/Strongly Disagree/Unsure]
- Separate Levy rates for thresholds for existing floorspace that is subject to change of use, and floorspace that is demolished and replaced [Strongly Agree/Agree/**Neutral**/Disagree/Strongly Disagree/Unsure]

**Question 13:** Please provide a free text response to explain your answers above where necessary.

Whilst the theory behind collecting more infrastructure funding by basing it on the final GDV is a good one, the detail of how it will be administered has the potential to become very complex. Councils will want to have different thresholds and rates for different zones within their areas. Evidence from the application of CIL indicates that this needs to be kept simple to allow efficient administration. Adding different typologies to the system and different rates and thresholds for retained/demolished/permitted development sets in motion a much more complex system.

Likewise, setting a lower rate initially and then stepping it up over time would be complex to administer. Thought should be given to keeping the system as simple as possible in order to avoid the pitfalls of the current CIL system.

### CHAPTER 3 – CHARGING AND PAYING THE LEVY

**Question 14:** Do you agree that the process outlined in Table 3 is an effective way of calculating and paying the Levy? [Yes/No/Unsure] Please provide a free text response to explain your answer where necessary.

No, there needs to be more clarity on the timing of the provisional liability payment. To say post-decision, prior to occupation is too wide in scope and open to abuse. If payment is made early, the final adjustment could make it much higher. As there are enforcement implications with the final payment being beyond completion, councils could lose out on funding.

**Question 15:** Is there an alternative payment mechanism that would be more suitable for the Infrastructure Levy? [Yes/No/Unsure] Please provide a free text response to explain your answer where necessary.

The Government should clarify that the provisional payment is made no sooner than 2 months prior to first occupation. This would give enough time for the conveyancing to go through.

The proposed scheme should not allow the sale of the last 10% until the final GDV has been calculated and paid. There should be strong financial penalties in place for failing to adhere to this.



**Question 16:** Do you agree with the proposed application of a land charge at commencement of development and removal of a local land charge once the provisional Levy payment is made? [Yes/No/Unsure] Please provide a free text response to explain your answer where necessary

This is provided that the penalty for failure to pay the final adjustment is high enough to prevent this being a problem and that there are robust legal regulations in place for dealing with breaches at the final payment stage.

**Question 17:** Will removal of the local land charge at the point the provisional Levy liability is paid prevent avoidance of Infrastructure Levy payments? [Strongly Agree/Agree/Neutral/Disagree/**Strongly Disagree**/Unsure] Please provide a free text response to explain your answer where necessary.

Our Council strongly disagrees. Whilst a large part of the levy will be paid, it is too easy for the developer to step away without calculating/paying the final adjustment payment, or to perhaps never finish the development to avoid paying the full levy amount due.

**Question 18:** To what extent do you agree that a local authority should be able to require that payment of the Levy (or a proportion of the Levy liability) is made prior to site completion? [**Strongly Agree**/Agree/Neutral/Disagree/Strongly Disagree/Unsure]. Please explain your answer.

The final adjustment payment for the total remaining amount should be made prior to completion. As suggested, this should be prior to completion of the last 10% with penalties for failure to follow this regulation. We are very concerned that some unscrupulous developers could try to escape from making the payment. Not everyone buying a new house does appropriate due diligence to check that charges like CIL have been paid. Our authority can provide examples of this if required.

**Question 19:** Are there circumstances when a local authority should be able to require an early payment of the Levy or a proportion of the Levy? Please provide a free text response to explain your where necessary.

Yes, all final totals should be paid before completion of the development and earlier if the developer is showing signs of holding back on completing the development to avoid making payment. We are concerned that this would be very difficult to regulate.

**Question 20:** Do you agree that the proposed role for valuations of GDV is proportionate and necessary in the context of creating a Levy that is responsive to market conditions [Yes/No/**Unsure**]. Please provide a free text response to explain your answer where necessary.

Whilst the use of valuations and SDLT data is essential to capture changes in land value, the suggestion that they don't always need to be used and that some may rely on the indicative value, some on SDLT data, some on an actual valuation is not clear enough and could leave councils open to time-consuming disputes. Having a set process in place for clarity will aid administration of the process.

#### CHAPTER 4 – DELIVERING INFRASTRUCTURE

**Question 21:** To what extent do you agree that the borrowing against Infrastructure Levy proceeds will be sufficient to ensure the timely delivery of infrastructure? [Strongly Agree/Agree/Neutral/**Disagree**/Strongly Disagree/**Unsure**]. Please provide a free text response to explain your answer where necessary.

Our Council is concerned that this does not fit with other financial regulations. Loans cannot be taken by local authorities from unsecure funds. There could be a need to update financial regulations to allow local authorities to undertake this new approach.

We understand that in 2 tier authorities, county councils are particularly concerned if the LPA are only the charging authority. The proposals suggest we will need to borrow money on behalf of local councils and other third parties. Our Council is very concerned about taking on these borrowing risks, particularly as the facilities provided would not always be our asset. For example, highways and schools are County Council assets, other infrastructure belongs to utilities providers. There is a lack of clarity in the wording in the consultation and we consider it will be very difficult to implement IL effectively if only the local planning authority can borrow the money.

We advise that the regulations should cover, and clear guidance be provided, on how two tier authorities are expected to collaborate on the prioritisation, use and borrowing against receipt of the new levy funds and the on completion of the statutory Infrastructure Delivery Strategy. This should also stretch to other infrastructure providers.

We would like to see more clarity about this now before the regulations are issued. We further recommend that the Government should consult Chartered Institute of Public Finance and Accountancy (CIPFA) on these proposals, in light of our concerns above.

**Question 22:** To what extent do you agree that the government should look to go further, and enable specified upfront payments for items of infrastructure to be a condition for the granting of planning permission? [**Strongly Agree/Agree/Neutral/Disagree/Strongly Disagree/Unsure**] Please provide a free text response to explain your answer where necessary.

We consider that we should be seeking as much funding upfront as possible. There would need to be an upfront calculation, and this can then be reviewed at the end, when the payment is due.

What is proposed may require further changes to other planning legislation (i.e. T&CPA 1990). For example, using planning conditions may not be an appropriate mechanism for this. The current maximum penalty for a breach of condition is a maximum of £1,000, which is not a large amount for a large developer.

**Question 23:** Are there other mechanisms for ensuring infrastructure is delivered in a timely fashion that the government should consider for the new Infrastructure Levy? [**Yes/No/Unsure**] Please provide free text response to explain your answer where necessary.

It is not clear if the question is about on-site or off-site infrastructure.

For on-site infrastructure this could be achieved by setting trigger points for when developers should provide the infrastructure by, as is currently done through S106 agreements. However, a quicker route and more stringent penalties to resolve breaches in meeting trigger points would help to monitor and enforce these requirements.

It will be difficult for the new levy to fund large major infrastructure projects 'big ticket items' e.g. major road infrastructure, as they cost such large sums, often requiring government and/or other funding sources to be secured, and take a long time to deliver.

Other legislation may be needed to ensure that utilities providers e.g. water companies deliver infrastructure when it's needed, in a timely manner. For example, could a Grampian condition help to ensure that the development doesn't start until the infrastructure has been provided? Currently a Grampian condition can only be used to persuade the developer to provide infrastructure, not the water/utilities company who would deliver the infrastructure.

**Question 24:** To what extent do you agree that the strategic spending plan included in the Infrastructure Delivery Strategy will provide transparency and certainty on how the Levy will be spent? [Strongly Agree/**Agree**/Neutral/Disagree/Strongly Disagree] Please provide a free text response to explain your answer where necessary.

We agree with setting out what infrastructure is required and how this could be funded. It is intended that this document should replace the Infrastructure Delivery Plan (IDP) and be examined at the same time as the levy charging proposals. In theory this should be helpful, however, without detailed regulations or information about how flexible the strategy can be or its required content, it is difficult to know if it will be effective.

Elements of current CIL expenditure by the council prioritise spending on local infrastructure requirements that would have previously been secured through S106 agreements prior to the introduction of the levy. It is not clear whether this will still be possible through these proposals. Whilst a neighbourhood allocation will remain and be passed to the relevant town and parish council, it's not considered that in our rural setting with numerous parishes, that these organisations would be best placed to consider use of funding that would fall outside of their spending powers.

Could it be considered that any IL neighbourhood share that is paid to the town or parish council that is not spent within five years, can be required to be returned to LPA for use in-line with the strategic element, and not with the geographical restrictions of the neighbourhood share?

We are also concerned about the process for reviewing the Infrastructure Delivery Strategy (IDS) and consider that this should be allowed to be flexible or that councils should have the ability to make all but significant amendments over time as infrastructure needs can change. It will not be practical for an examination to take place each time any amendment or changes in priorities are needed. If too much detail is fixed when the IDS is examined, then this is a concern as it may need to be amended, and subsequently examined, frequently. To avoid this but to remain transparent, it would be preferable that statutory elements of the strategy only require the spend of the levy funding to be committed to types of infrastructure rather than specific projects. It is also not clear if the levy contributions will be able to address existing deficiencies identified at that time, or if it will be forward looking and look only at what is needed over the Local Plan period to support planned development. Our council considers that it will need to cover both.

**Question 25:** In the context of a streamlined document, what information do you consider is required for a local authority to identify infrastructure needs?

Current proposals for the new levy as a whole are complex and seem to indicate that the IDS will need to be detailed. Requiring the IDS to be examined every time it is updated will make it very inflexible if it is too restrictive in its requirements. The ability for the strategy to identify the types of infrastructure to be funded by the levy rather than for this to be tied down to specific projects will allow the use of funds to adapt to changes in need and negate the requirement for regular revision and re-examination of the strategy whilst still retaining its transparency. Identified projects should be included, as should anticipated need where specific schemes to mitigate this are yet to be identified.

The consultation paper suggests that Section 106 negotiations are ad hoc, but this is not the case, our current IDP is already used to inform the heads of terms for Section 106 and it is clear about the contributions expected from developers.

**Question 26:** Do you agree that views of the local community should be integrated into the drafting of an Infrastructure Delivery Strategy? [Yes/No/Unsure] Please provide a free text response to explain your answer where necessary.

The council strongly supports the involvement of the local community in the planning process. However, it is not clear how practical this will be for shaping the proposed Infrastructure Delivery Strategy. The current Infrastructure Delivery Plan is based on evidence that informs what infrastructure is needed to support new development and address the wider strategic needs of our district. It is not clear how local views, that will often be related to the needs of a smaller town or parish council geography or be in overall objection to wider schemes that are needed to support growth, can be incorporated effectively into a district-wide IDS, other than through the Local Plan as they are currently.

The current CIL regulations encourage community engagement for use of the neighbourhood element to support the local demands of development. The council would support this requirement to remain and will continue to advocate the neighbourhood planning process that helps identify and document these needs.

**Question 27:** Do you agree that a spending plan in the Infrastructure Delivery Strategy should include:

- Identification of general ‘integral’ infrastructure requirements
- Identification of infrastructure/types of infrastructure that are to be funded by the Levy
- Prioritisation of infrastructure and how the Levy will be spent
- Approach to affordable housing including right to require proportion and tenure mix
- Approach to any discretionary elements for the neighbourhood share
- Proportion for administration
- The anticipated borrowing that will be required to deliver infrastructure
- Other – please explain your answer
- **All of the above**

For Q27 and Q28 there is no space given on the consultation portal for additional comments. Our Council wishes to make the following comments to expand on our response;



Q27 - The ability for the strategy to identify the types of infrastructure to be funded by the levy rather than for this to be tied down to specific projects will allow the use of funds to adapt to changes in need and negate the requirement for regular revision and re-examination of the strategy whilst still retaining its transparency. Identified projects should be included, as should anticipated need where specific schemes to mitigate this are yet to be identified.

**Question 28:** How can we make sure that infrastructure providers such as county councils can effectively influence the identification of Levy priorities?

- Guidance to local authorities on which infrastructure providers need to be consulted, how to engage and when
- Support to county councils on working collaboratively with the local authority as to what can be funded through the Levy
- Use of other evidence documents when preparing the Infrastructure Delivery Strategy, such as Local Transport Plans and Local Education Strategies
- Guidance to local authorities on prioritisation of funding
- Implementation of statutory timescales for infrastructure providers to respond to local authority requests
- **Other – please explain your answer**

For Q27 and Q28 there is no space given on the consultation portal for additional comments. Our Council wishes to make the following comments to expand on our response;

Q28 - It is important that the Government listens to the views of County Councils when considering this question. We are concerned that there are insufficient safeguards within the system to provide sufficient monies to support transport and schools. For example, our council already passes additional CIL monies and Section 106 contributions to the County Council for new schools. Strategic transport projects in our districts are reliant upon additional funding from government to secure their delivery.

We consider that there is also a potential issue in relation to the use of Local Transport Plans. These documents are not independently examined and the district, as the local planning authority has no control over the timescales for their production. This could make it difficult for these to inform the infrastructure delivery strategy if the timetables for production of these documents do not align.

If IL is to be introduced as set out in the consultation paper, local authorities will need additional guidance on which infrastructure providers need to be consulted, how to engage and when. What is not clear is how and if local authorities will be able to do this when the timescales of district councils, county councils and utilities providers do not align, as is often the case.

Our Council is also concerned over what might happen if the LPA is approached for levy funding but there are insufficient funds due to allocation to schemes or conflicting priorities. It should be clear that the ability to seek IL funding from LPA should not diminish other funding opportunities if IL funding was oversubscribed or the request was not considered as a priority.

**Question 29:** To what extent do you agree that it is possible to identify infrastructure requirements at the local plan stage? [Strongly Agree/**Agree**/Neutral/Disagree/Strongly Disagree/Unsure] Please provide a free text response to explain your answer where necessary.

Our Council partly agrees with this statement, however, there will inevitably be changes to needs and schemes over the plan period, particularly on smaller and more localised schemes. It can take a long time to get some providers such as the county council, integrated care board, utilities companies etc to ensure that they provide the right information at the right time. At a local plan stage, a detailed local community facilities assessment might not be available, this could mean that smaller schemes (such as a community facilities) might not then be identified, as they wouldn't typically be picked up at the local plan stage.

It is also not clear what will happen with Section 278 agreements which come under the highways act. We would expect developers to pay for these. Our discussions with other local authorities reflected similar concerns to those that we have on these issues.

## CHAPTER 5 – DELIVERING AFFORDABLE HOUSING

**Question 30:** To what extent do you agree that the ‘right to require’ will reduce the risk that affordable housing contributions are negotiated down on viability grounds? [Strongly Agree/Agree/Neutral/**Disagree**/Strongly Disagree/Unsure] Please provide a free text response to explain your answer where necessary.

How would the ‘right to require’ figure be calculated for the indicative liability if the amount sold to the Registered Provider is not known at the outset? Figure 1 outlines the proportion is indicated in the Infrastructure Strategy but is altered to provide a cash sum to add to the levy liability (the cumulative discount). This altered amount will not be known until sale to the Registered provider. Potentially this could affect the provisional liability?

It is understood that the right to require will be fixed. However, if it’s fixed then there is no scope for negotiation. However, it is noted (paragraph 5.12) that local authorities can redirect affordable housing to other infrastructures. Developers may then put pressure on a local authority to reduce the request for affordable housing to provide funds for infrastructure. The wording is not clear and it seems that there will be less affordable housing delivered as a result of this change. It may also mean what is in the current Local Plan affordable housing will not be delivered.

**Question 31:** To what extent do you agree that local authorities should charge a highly discounted/zero-rated Infrastructure Levy rate on high percentage/100% affordable housing schemes? [Strongly Agree/Agree/Neutral/Disagree/Strongly Disagree/**Unsure**] Please provide a free text response to explain your answer where necessary

Our districts already have some example schemes where no levy applies. This reflects the current position in CIL where 100% affordable housing schemes do not have to pay CIL. We agree that 100% affordable housing schemes do not need to pay the levy. However, local authorities should be able to require essential Highway works or a play area through Section 106 or they may not be delivered. When there is market housing on a site then a charge should be made. These schemes should follow the Route 2 – infrastructure in-kind routeway.

**Question 32:** How much infrastructure is normally delivered alongside registered provider-led schemes in the existing system? Please provide examples.

As highlighted in our response to Q31, the schemes where no levy applies are the strategic sites where all infrastructure will be met through S106 – we do not usually have any major 100% affordable housing schemes. The 100% affordable housing schemes we have had are minor applications (comprising occasional rural exception sites) and we do not seek infrastructure through S106 on minor developments. The affordable housing is liable to CIL relief and any market element of mixed tenure schemes will pay CIL.

The only larger schemes for affordable housing that we have received relate to extra care provision- examples being Great Western Park (P02/W0848/O) and Wallingford Site B (P14/S2860/O. These are part of larger strategic sites and the infrastructure provision has been considered in relation to the overall development. Infrastructure for the extra care element has been secured but it has been tailored. For instance, we have considered open space and leisure but we have not sought education contributions. Waste provision is usually requested for all developments over 10 dwellings.

**Question 33:** As per paragraph 5.13, do you think that an upper limit of where the 'right to require' could be set should be introduced by the government? [Yes/**No**/unsure] Alternatively, do you think where the 'right to require' is set should be left to the discretion of the local authority? [**Yes**/No/unsure]. Please provide a free text response to explain your answer where necessary.

We are concerned that this element of the proposals has not been given sufficient consideration and that it may not deliver 'at least as many affordable homes as the current system' as promised.

The situation across the country is different for everyone. We currently secure contributions for infrastructure and affordable housing, and it makes sense for the council to set this. Our Council is further concerned that the proposals as drafted will not enable us to know when the affordable housing will be delivered and we consider that the GDV will need to be decided at the beginning to give everyone certainty.

For affordable housing, registered providers might need to give us information upfront, and they might be unwilling to do this due to commercial sensitivity.

Councils need to retain flexibility to address affordability across our district. If there is a blanket 'right to require', this may restrict addressing affordability and more specifically the tenures we require. If Councils can retain this flexibility it will give us more control of what level of supply of AH we want to secure, which in turn enables us to consider appropriate tenures to address affordability.

The way affordable housing is calculated as part of the levy, social rent units will take up more of that levy liability value than affordable rent or shared ownership. This means if we look to secure more social rented units, overall affordable housing numbers may take a hit. In which case, 'at least as many affordable homes as the current system' may not necessarily be achieved in areas of unaffordability.

## CHAPTER 6 – OTHER AREAS

**Question 34:** Are you content that the Neighbourhood Share should be retained under the Infrastructure Levy? [Yes/No/Unsure?]

**Question 35:** In calculating the value of the Neighbourhood Share, do you think this should **A) reflect the amount secured under CIL in parished areas (noting this will be a smaller proportion of total revenues)**, B) be higher than this equivalent amount C) be lower than this equivalent amount D) Other (please specify) or E) unsure. Please provide a free text response to explain your answer where necessary

We consider our Town and Parish Councils should continue to receive a portion of IL like that secured under CIL. Under CIL, the neighbourhood allocation has a wider use than infrastructure delivery and can be used on "anything else that is necessary to support development" such as local services. Suggest that this freedom remains under the neighbourhood element.

**Question 36:** The government is interested in views on arrangements for spending the neighbourhood share in unparished areas. What other bodies do you think could be in receipt of a Neighbourhood Share in such areas?

Clarity should be provided on arrangements for the neighbourhood share in areas where there is a parish meeting rather than a town or parish council. These are technically classed as unparished areas, but the current CIL regulations do not address how these allocations are to be dealt with. Parish meetings are small in size and have limited spending powers and tend to generate small liabilities which makes using the allocations difficult. Specific guidance or regulations on how to manage these situations would be welcomed.

**Question 37:** Should the administrative portion for the new Levy A) reflect the 5% level which exists under CIL **B) be higher than this equivalent amount**, C) be lower than this equivalent amount D) Other (please specify) or E) unsure. Please provide a free text response to explain your answer where necessary.

B) Our Council considers it should be higher than the current 5%. Currently we also receive monitoring fees from S106s, a portion of which are used to mitigate the impact of producing the Infrastructure Funding Statement (IFS). If the new Infrastructure Delivery Strategy is to encompass the IFS and old style IDP, additional funds would be needed to administer this 'cross-council' document. It also benefits the local authority to receive the administration charge upfront. If this money is received at the end of the process there is a potential risk to resourcing as we move from a system that pays up front to one that pays at the end, after work is completed. The administration element should be able to be carried forward from one year to the next.

**Question 38:** Applicants can apply for mandatory or discretionary relief for social housing under CIL. Question 31 seeks views on exempting affordable housing from the Levy. This question seeks views on retaining other countrywide exemptions. How strongly do you agree the following should be retained:

- residential annexes and extensions; [Strongly Agree/Agree/Neutral/Disagree/**Strongly Disagree**]
- self-build housing; [Strongly Agree/**Agree**/Neutral/Disagree/Strongly Disagree]



If you strongly agree/agree, should there be any further criteria that are applied to these exemptions, for example in relation to the size of the development?

Residential annex and extensions - These should be removed entirely from the levy liability, without the need to apply for relief.

Approximately 95% of these applications are for self-builders who must go through a long process of paperwork to claim/prove exemption status. It is time-consuming for all involved and stressful for the applicant when there is no infrastructure gain or requirement.

Self-build housing – Agree and no other criteria need to be added.

**Question 39:** Do you consider there are other circumstances where relief from the Levy or reduced Levy rates should apply, such as for the provision of sustainable technologies? [Yes/No/Unsure]. Please provide a free text response to explain your answer where necessary.

Sustainable technologies are a requirement of the planning process now and could potentially demand higher GDV. It will also add a layer of complexity to applying the levy.

**Question 40:** To what extent do you agree with our proposed approach to small sites? [Strongly Agree/Agree/Neutral/Disagree/Strongly Disagree/Unsure] Please provide a free text response to explain your answer where necessary.

No response

**Question 41:** What risks will this approach pose, if any, to SME housebuilders, or to the delivery of affordable housing in rural areas? Please provide a free text response using case study examples where appropriate.

No response

**Question 42:** Are there any other forms of infrastructure that should be exempted from the Levy through regulations?

No response

**Question 43:** Do you agree that these enforcement mechanisms will be sufficient to secure Levy payments? [Strongly Agree/Agree/Neutral/Disagree/**Strongly Disagree**/Unsure] Please provide a free text response to explain your answer where necessary.

No, we do not consider that the enforcement mechanisms are strong enough to secure levy payments as set out in our response to question 14. If the levy comes after development is sold there is no hook or stick to require the developer to pay. Once they have left the site the developer may no longer be willing to pay. This payment should be made before the end or there is a lack of incentive for developer to pay. Determining the levy at the end of the process will introduce a very complex system.

There also needs to be more clarity on the timing of the provisional liability payment. To say 'post-decision, prior to occupation' is too wide and open to abuse i.e. paying early and never paying the final adjustment.

Whilst the use of Land Charges will be important to gain the provisional payment, there does not seem to be enough enforcement described yet for the final adjustment payment. There needs to be a mechanism in place to force the developer to pay this and not hold back on the final part of development to avoid paying. Perhaps forcing payment before the final 10% of development, with hefty financial penalties for failure to pay could be considered.

Use of court orders, charging orders and restraint needs to be retained to match the current CIL system, thus giving local authorities the power to retrieve payments.

Our Council is further concerned that what is proposed will not help enforce the payment of affordable housing and that it is not clear what will happen if the applicant doesn't pay. What is proposed moves the burden to the local authority to take enforcement action which will place an additional burden on an already under resourced system.

What is proposed could also be particularly problematic for affordable housing if it is agreed at the end of the process that more money is to be given to the local authority to build housing and deliver it themselves. The land is very expensive in our district and the contribution might not be sufficient to purchase land and then build the

house that is required. This would result in less affordable housing being provided.

## CHAPTER 7 – INTRODUCING THE LEVY

**Question 44:** Do you agree that the proposed ‘test and learn’ approach to transitioning to the new Infrastructure Levy will help deliver an effective system? [Strongly Agree/**Agree**/Neutral/Disagree/Strongly Disagree/Unsure] Please provide a free text response to explain your answer where necessary

Yes, we do think the ‘test and learn’ approach is a good one. However, there needs to be comparable authority for each type of Council that usually has CIL. We recommend that it should certainly include authorities that already have CIL as it will be very difficult for authorities that haven’t had for CIL to implement.

The proposal will potentially provide a third system for our authority which will be challenging as we will have applications that are CIL, Section 106 and the new IL system.

There is concern over the test and learn timings and mandatory introduction for all LPA’s as indicated in the presentations provided. For the impact of the new levy to be fully assessed, this means that the test authorities will need to have set the charging rates and IDS, gone through examination, introduced the new system, implemented this on a suitable number of developments and seen these developments reach completion. However, the proposed timing of this and the timescales to begin the process of the mandatory introduction for all LPAs would make it unlikely that the full effect of the new levy would be understood. Particularly the final collection element, which is one of the main causes of concern.

**Question 45:** Do you have any views on the potential impact of the proposals raised in this consultation on people with protected characteristics as defined in section 149 of the Equality Act 2010? [Yes/No/**Unsure**]. Please provide a free text response to explain your answer where necessary.

This is for DLUHC to determine but any proposals that impacts affordable housing would need careful consideration in light of Section 149.

