



Consultation Response

# Technical consultation on the Infrastructure Levy

Response by the Royal Institution of Chartered Surveyors (RICS).



# Introduction

The Royal Institution of Chartered Surveyors (RICS) is pleased to respond to this Call for Evidence by the Department for Levelling Up, Housing and Communities (DLUHC).

Established in 1868, RICS is the largest organisation of its kind for professionals in property, construction, land, and related environmental issues, setting and upholding professional standards for 125,000 qualified professionals and over 10,000 firms. RICS regulates both its individual qualified professionals and those firms that have registered for regulation by RICS.

Over 80,000 of our qualified professionals work in the UK, where our goal is to deliver a healthy and vibrant property and land sector as a key pillar of a thriving economy while addressing the need for the creation of green, safe communities.

We are not a trade body; we do not represent any sectional interest, and under the terms of our Royal Charter the advice and leadership we offer is always in the public interest.

# Executive summary

RICS welcomes the government's intention to simplify the development levy system applying to new development. We also recognise that the current proposal moves from an existing measure intended to capture a proportion of the uplift in land value to fund infrastructure and affordable housing, to a measure which is explicitly intended to maximise land value capture subject to maintaining development viability.

It seeks to address an area of planning policy unresolved since the introduction of the Town and Country Planning Act 1947 i.e. capturing unearned uplift in land values associated with planning measures. The granting of planning consent for development has an impact on the wider area and imposes costs on the local community. The recovery of costs from the development gain in land price is both fair and reasonable in the public interest provided that it is proportionate. The level of tax needs to be gauged so that it does not frustrate or delay the development process, damage the national, regional and local economies and frustrate the delivery of development, especially housing.

It must be proportionate in its application and administration, but it must also work better than the existing system. Equally it must contribute to the aims of 'levelling up' one of the core purposes of the proposed legislation. RICS members have been closely involved with attempts to implement several such measures over the years. The proposed Infrastructure Levy (IL) represents significant change to be implemented over an extended period. We regard this measure, which is a form of development land tax, with extreme caution, conscious of previous experiences.

We are keen to find more equitable and administratively efficient ways of funding necessary infrastructure and affordable housing while maintaining the business case to develop. At the same time, we are concerned about serious unintended consequences the IL proposals may have on land markets and the planning and development process. Case studies we have reviewed indicate that less revenue and fewer affordable homes would be delivered with additional significant consequences for the timely delivery of key infrastructure. We also support the conclusion in the Liverpool University Report that little or no revenue will be collected from low value locations, i.e. areas in need of infrastructure funding to support the levelling up agenda.

Some of the over-riding risks we see are as follows:

- The history of measures focused on land value capture and development land taxation so far, as well as the over-estimation of expected revenue gains
- The long timeframe for implementation of the IL, although beneficial in easing the measures into the system, leaves the proposal exposed to long-term political risk
- The point in the political cycle exposes the IL to immediate short-term political risk

- The potential distortion of land markets with three different land value capture measures in operation namely CIL, s106 and IL (Test and Learn; Transition period)
- Many low value locations will not have land value uplift to capture, but there will still remain the need for infrastructure and affordable housing to be provided
- IL will be mandatory for low value locations resulting in a cost and resource burden to implement it without any expected benefit
- Ongoing lack of capability and capacity in local planning authorities to deliver existing planning services, without implementing new measures through a transition period stalling current plan making and investment decisions
- As highlighted in our [response](#) to the 22.12.22 NPPF consultation, many LAs have suspended work on replacement local plans increasing the number of expired plans unsuited for the piloting and implementation of the IL proposal.
- Doubts as to whether there are the skills and capacity in the private sector to service both public and private sector clients when it comes to continual viability assessments and rate setting scrutiny through the charging schedule process
- Proposed housing thresholds to determine the IL routeway are too high as set out in the consultation document and should **only** be prescribed at a local level.

## RICS/DLUHC Workshops

In parallel with this consultation RICS has been engaged with the Infrastructure Levy team in workshops to address aspects of technical detail of the levy and these will continue after the consultation period closes. This provides an opportunity to examine more closely the mechanics of the IL process. If government intends to proceed with this measure, we would wish to assist in making it technically work as effectively as possible to meet its aims.

We support the intention to reduce contentious areas around viability assessment in the existing system. These typically relate to changes in development costs and values between the time CIL/affordable housing rates are set and planning permission granted with obligations. Such market movements affect the business case for development which under the current system may give rise to the need to re-negotiate agreed planning obligations.

These changes in market conditions can variously have a negative impact on the developer, the local authority and the local community and undermine confidence in planning. We welcome government's intention to address these issues in the current proposed Infrastructure Levy.

## Similar but very different to CIL

Although the design of the IL may share certain technical similarities with CIL, **the IL is very different in its intentions and its scope.** It initially set out to be a simple application of a standard levy on a discoverable development metric – gross development value – applied uniformly nationwide. As it has evolved it has become increasingly complex to respond to very varied locational circumstances across the country as well as variable cyclical conditions impacting not

just on value but input costs also. Its intention also seems to be extending to that of a general taxation measure where the revenue may be dispensed on a wide range of local services unrelated to the development through which it was raised.

Although GDV may in most cases be an **easily discoverable metric capable of responding to changing market conditions**, other key metrics essential to the smooth functioning of the IL are not and certainly not reliable at the point at which the IL obligations become fixed. The relationships between metrics of cost, value and return over time are fundamental to the development model, but they are very variable over the development cycle and between places. Timing of IL payments is therefore critical too. Policy makers desire to even out such variability is likely to create risk to delivery. While the levy design may have an internal coherence, without introducing more flexibility to its components it may be a poor fit for the diverse circumstances it needs to address to optimise revenue generation and affordable housing while maintaining viability and delivery. Application stage viability testing provides an essential 'safety valve' to ensure schemes are assessed on their site-specific merits.

The proposed measure is a sales tax on the gross development value of the completed development. Applying the rate to the GDV seeks to address the loss in revenue occurring where values rise between the setting of the levy rate and the sale of the property. The **business case for development is based not only on the GDV but also on the input costs to achieve that GDV**. Adequate account of this needs to be taken in the levy design. This takes place at the beginning of the IL process when costs are estimated and are unlikely to fully reflect the actual costs of increasing standards as well as general inflation.

As stated in paragraph 1.9 of the consultation document **'The Levy is non-negotiable**, and so this approach removes the need for contributions towards this type of infrastructure to be negotiated on a site-by-site basis'. While this may decrease the delays currently experienced in the planning system from s106 negotiations on affordable housing contributions it also removes an element of flexibility present in the current system essential to enabling the appropriate package of planning obligations to be delivered.

Bringing certainty to planning obligations at the earliest stage in the process and removing the risk of protracted negotiations at the development management stage are laudable objectives in the IL. Inevitably this comes with **reduced flexibility in responding to specific site conditions** which will impact negatively in some locations. It will be critically important for the LPA to determine the right thresholds that activate the in-kind or s106 routeway and not solely the Core Routeway. Getting the balance right on what scale of development is most at risk of these variations and which of the proposed Levy routes these developments are allocated to will be an important consideration in making the IL work effectively.

### Local authority Implementation

RICS is not convinced that local authorities in practice would **forward deliver infrastructure** provision on the expectation of future IL receipts. We are also concerned that the timing of IL payments, which sees the bulk of payment in Stages 2 and 3, is practical and to consider any consequences this could have over the life of multi-phased schemes.

The increasing complexity of the IL as it has evolved is a significant concern. The uncertainty it brings in **ascertaining the end liability** on completion raises a number of issues not least how lenders/funders of projects will respond to these proposals on a site-by-site basis. Uncertainty in not knowing the final IL liability until the end of the process may deter development funders. What is proposed is akin to a late-stage review operating under the London Mayor. Experience reported to us from the London Mayor's regime suggests most applicants in London avoid a late-stage review process because of uncertainty. This is a critical issue that needs more consideration given the potential impact on developments under an IL regime.

Based on the introduction of CIL and the **transitional arrangements** required with this measure, RICS strongly recommends that planning applications validated by the local planning authority before the commencement date of the IL should be allowed to continue under that planning regime through to completion. This would include s.73 applications (creating a new consent) so that there is clarity and consistency in both the liability to be paid and certainty in the process. Planning applications validated post the commencement date of the IL in a planning authority should be processed fully under the new system.

On **'Test and Learn'** (T&L), RICS is mindful that local authorities may not come forward without some sort of resource or financial incentive to take part. Furthermore, there will be an inevitable risk that Test and Learn authorities could deter applicants coming forward than would otherwise do so under the current regime. There will need to be suitable safeguards for local planning authorities so that participating in T&L is not perceived by developers as an additional complexity. The T&L model's design and implementation will need to instil confidence in both the public and private sector to engage with it. It will be equally important that a wide variety of type, size, land markets etc is considered carefully in the T&L programme. A hybrid option of a twin track programme of IL and their current planning obligation arrangement could also be considered as an option.

## Interim Measures

As the IL programme has a number of years to go before being fully adopted, there is a strong case to reconsider how **improving s106 agreements** in the short term or as an alternative to the IL can help improve the planning gain process. This may include better counsel resourcing in local planning authorities or a template document that can be standardised to speed up the process. It is an area which we believe there would be broad consensus by the public and private sector, where improving the s106 process will largely deliver more certainty and greater dividends. Even if the proposed IL is introduced the lack of skilled staff in planning departments will continue to act as a barrier to development.

We consider the IL policy proposals are more suited to greenfield schemes rather than more complex urban schemes and locations where there is little uplift in value to capture.

RICS believes the proposed IL does not suit the complexity of the development process which takes place on urban/ brownfield sites. While there is the potential to consider an IL on small to medium sized schemes located on greenfield developments to capture the uplift in land value, it is not without risk and uncertainty even at this scale. Not all greenfield sites would suit such a Levy particularly in cases where large scale schemes come forward which have to deliver large scale supporting infrastructure to make the scheme deliverable. We would expect the threshold for the infrastructure-in-kind route will be drawn at the appropriate level to recognise this.

Focusing the T&L process on greenfield development first may be a helpful way to proceed.

# Consultation response

Notwithstanding our foregoing remarks, our comments below are intended to address how the Infrastructure Levy could be optimised in its application to achieve its intended aims.

## 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.

Yes, we generally agree with maintaining current CIL definitions and that the above should be excluded from the definition of development for the purposes of the IL.

**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.**

Yes, we agree that developers should continue to provide certain kinds of infrastructure incorporated into the design of the site referred to as ‘integral’ to the site, outside of the Infrastructure Levy. This is infrastructure typically associated with the normal servicing of the site without any exceptional or abnormal costs. Developers need to control the site and delivery of the end-product as it effects viability and cashflow. These should form part of the development viability and residual valuation in the established fashion.

The consultation document recognises the challenge of distinguishing between ‘integral’ and levy funded infrastructure. For example, the expansion of sewage treatment capacity may be essential for the site to function and is critical in terms of ‘nutrient



neutrality' issues. At what scale is this to fall into the category of 'integral' or Levy funded? The definitions or classifications of infrastructure will be important to avoid dispute as referred in Q3 below.

Integral Infrastructure; Planning Conditions; Delivery Agreements. What is the gap being referred to here that necessitates a DA? The scope of application of Delivery Agreements appears to be open ended.

**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.**

The definition of what qualifies as integral and Levy funded could usefully draw on the proposed National Development Management Guidance and the national design codes; as well as the building regulations to build up a definition of what is regarded as integral infrastructure. As a starting point all national standards for development would be regarded as integral.

As this definition is in support of a taxation measure there is a need for certainty, so it is likely to need the weight and prescription of regulation. But local conditions may dictate differently. There is discretion given to local planning authorities about what is included in the infrastructure delivery strategy which runs counter to the objective of certainty. Additionally, the need to respond to climate change is incrementally resulting in ever more demanding standards to be met on site. So, regulations could quickly become obsolete.

The concern is that the concept of 'integral' infrastructure together with 'delivery agreements will result in creep which is intended to free up Levy funds for other services within the local authority.

Clarity of the separation is important. It may be convenient to limit delivery to being on site within the redline area to retain control over delivery. Nevertheless, there will be many cases where provision outside the redline boundary justifiably arises for integral funding such as road improvements and biodiversity.

There is circumstance when the provision of off-site infrastructure is required to improve the site to be developed. For example, the value of the site will be improved by the early completion of infrastructure, and this will bring the development into viability

allowing the development to proceed. Some mechanism is required that creates collaboration between the developer and local authority to allow infrastructure improvement to happen.

**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, we consider as the name 'Infrastructure Levy' conveys that this is a measure for the funding of infrastructure. Within the definition of infrastructure is affordable housing. We would be extremely concerned if this measure were used to capture revenue which were not allocated to the benefit of the residents of the new development and the delivery of affordable housing and infrastructure necessary to service the development.

It would be better to extend the definition of 'infrastructure' where the tax is to pay for those matters imposed on the local community, such as the need for clinics, surgeries, schooling, environmental and other 'costs' as a result of the planning consent for the development.

**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.**

Infrastructure and its maintenance and the provision of affordable housing should be the exclusive use of the Levy. With such a shortfall in affordable housing provision in the country allocation to affordable housing is a priority. It is particularly so in high value locations where IL receipts are expected to be highest and where the need for affordable housing is likely to be high also. This should be set in regulations.

**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.

**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.**

A key concern of developers is to have control over the provision of infrastructure when needed to service new developments or new phases of developments. There is considerable variability between local authorities in their experience and ability to deliver infrastructure. For this reason, category (d) local authority discretion would seem to address the variability of local authorities and could be objectively set out in their Infrastructure Delivery Strategy, providing this were maintained and up to date.

Following from this is how developments are to be classified. If the 'infrastructure in kind' route is more available, it will probably satisfy more developers in terms of flexibility but will act against achieving some of the aims of the IL.

Neither the developer nor its funders would take the risk of commencing development unless there was a legal commitment by the local authority to deliver the infrastructure when required. All this needs further testing.

**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.

The scope of Delivery Agreements needs to be more defined. There is concern that DAs could begin to creep into the scope of infrastructure that should be Levy funded if these distinctions are not properly made.

The relationship between S106, Delivery Agreements and IL funded infrastructure is still not clear.

Delivery Agreements like s106 agreements are contractual matters between the local authority and the developer/landowner. They are not within the planning legislation dealing with implementation and performance.

The DA could be as wide as the parties to the contract agree. There is no harm in this provided the liabilities are such that viability is not prejudiced, and the land price is not reduced below an amount that would cause the landowner to withdraw from the sale of land.

## 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, in certain cases but not all or at least not at the same rates. The proposed measure is a land value capture measure triggered by a permit to develop. A PDR is essentially a blanket permit issued by central government giving rise to an uplift in land value which under the current proposal fails to be taxed for that reason.

The conversion to residential use imposes different infrastructure requirements in terms of support for a residential population than was present before. Its contribution to infrastructure is therefore justified. It is arguable that the engineering infrastructure servicing the building may already be in place and a set off may be justifiable.

There are cases where regeneration or conservation of listed buildings is a primary planning policy objective. Provision for recognition of the incentivisation of a reduced or zero-rated levy should be at the discretion of the local authority. This interacts with two other taxes VAT and Business rates which impact on the business case to support such regeneration or conservation objectives. But it also creates tension between the need for certainty as a taxing authority and discretion as a planning authority.

**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?

In principle, the proposal is to capture land value uplift associated with permitting development. Not all properties availing of PDRs are in high value locations. In relation to local planning policy to regenerate; the flexibility to set different levy rates is important to maintain the incentive to regenerate in areas where values and economic conditions may be weak.

All householder development, self-build and small builder development projects under GPDO subject to minimum thresholds, or annual limit to encourage new industry entrants, and subject to regional LA variation flexibility as values differ significantly.

Where this is a regeneration, it is likely that the viability of the development is low. For example, there is no recognised market demand. But on successful development the assumptions dictated by the market prior to development can be changed and the final

value becomes greater, thus making viability much better. A clawback payable to the local authority might be appropriate but could also affect funding terms.

**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.

Yes, in some cases the existing engineering infrastructure is adequate to service the new use and therefore an offset is arguable. The issue raised here demonstrates the importance of considering local planning objectives in the round and understanding the trade-offs to be made between revenue generation and achieving the objectives of the local plan in a particular sector which may be economically marginal. This is where the benefits of a discretionary planning system work well but it fits uneasily with a prescriptive taxation system

Other ground conditions such as contamination, or factors restricting the density/capacity of the site for development might impose matters that reduce viability. It is important to look at all incidences of the costs for development to assess viability and the resultant tax.

**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]

In all our submissions to government on the matter of viability and levies we have emphasised the variability in economic conditions and land values in England. It is therefore difficult to set a uniform rate across the country. The ability to calibrate

charges, rates and thresholds is an important recognition of the variation in local and regional conditions. But as designed through the IL programme for implementation this is a very long-term goal.

RICS members report that the IL proposals as designed will not provide equivalent planning gain, much less additional planning gain receipts above what the existing system produces. More immediate results could be achieved by focusing attention on improving and properly resourcing the CIL/ s106 agreements process. IL charges should be confined to greenfield development where there is potentially a greater degree of certainty, simplicity and land value capture uplift to be had.

There are occasions when a regeneration scheme may be carried out in phases. The first is high risk and low return, subsequent phases might improve viability resulting in the final phase being low risk and high return. A particular approach might be necessary to assess a fair amount for the IL. Perhaps by lower interim payments with a higher clawback on final completion of the regeneration/development scheme.

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

The success of IL will depend upon:

**Confidence in the proposals and plans for implementation** – not to damage landowners' perceptions of bringing forward or agreeing to land being brought forward for development.

**Getting the rates and thresholds right** – access to the Liverpool model for testing by all stakeholders and interested parties.

**Implementation** – the principle of a simpler infrastructure contribution. CIL has not been properly adopted by many local authorities. It is difficult to be re-assured IL will be fully and properly adopted and implemented by all LA's? Local Authorities are not adequately resourced to deal with this. There are numerous examples where planning department resource is so scarce that progressing planning matters effectively is proving impossible and consequently developments including community school projects, affordable and key worker housing, cannot proceed.

**Transition** – Government is simultaneously introducing new building standards (Fire, Energy performance, etc.), major changes to the NPPF, together with independent reports on the failure to delivery sufficient housing. Too much change creating volatility,

uncertainty, delayed local plan preparation. Managing this transition without slowing down land supply and housing delivery is a primary risk and concern.

**Standardised Approach to Modelling and Examinations** – we note at 2.46 the proposal for DHLUC to work with LA's and their responses to craft a standardised approach to modelling and inputs to calculate and produce IL charging rates and thresholds. This would be welcome; however, it is essential that **all** stakeholders are engaged to create a transparent, accurate and effective system. Sector interests will need to be engaged.

### Chapter 3 – Charging and paying the Levy

**General comment:** A number of questions here relate to timing of payment and the technical details around this process. A more fundamental concern has been expressed about the willingness of local authorities to borrow against future IL receipts on completion of the development. As such, the timing of payments becomes an important consideration for both the developer and the local authority. Early payment is beneficial for the local authority reducing the need to borrow. Although early payment has an impact on the developer's cash flow, it may be preferable than the risk that the local authority may not borrow the funds to produce the infrastructure on time.

Much development in areas where the Levelling Up Agenda applies will require infrastructure improvement to kickstart development and/or achieve viability. This often requires the local authority to provide infrastructure before development can start. It would be unusual for the developer to pay IL upfront and achieve a viable scheme. There is a risk that paying upfront will damage the cashflow of the scheme, make it unviable, and frustrate development. But payment might be possible out of sales/letting of accommodation as the development progresses.

Often local authorities enter some form of financial modelling with contractual undertakings that allow them to fund the infrastructure conditional on the performance of the developer.

Every case is different. If tax is to be extracted from the development gain such payments must be structured in a manner that does not delay or frustrate development but where risk is taken by the local council a return for that risk must be factored into the financial model and forward funding.

**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.

One of the aspects of the IL appealing to developers was that payment was not due until the development was sold. Para 3.3 refers to registering the liability against the site as a land charge. In certain circumstances this lien on the land may impact on the developer's ability to borrow. This needs further clarification to understand whether this is any different to what is the current position.

Understandably the registration of the liability is an important protection for the local planning authority.

This could be secured but the law does not appear to have been developed to that stage. The basis of overage is a commitment to make a payment of money at some stage in the future and that commitment is supported by giving the recipient rights over the land from which the overage derives. The most usual method by which a future payment secured on land is arranged is a charge or mortgage.

Where the present value of the land is low, but to obtain planning permission the landowner is required to enter into an agreement under s106 Town and Country Planning Act 1990, any mortgagee on land will have to join in the agreement. The purpose of overage is to sell land as unfettered as possible so that the overage owner does not interfere with normal development. Therefore, the powers under s99 Law Property act 1925 will need to be modified but not excluded altogether. Mortgages and charges can be useful in overage. Technical arguments are raised against them. However, they are not suitable where the landowner wishes to use the land as security for borrowing. Banks do not wish to see any prior charge on title.

S106 and perhaps Development Agreements being contractual might be the subject of some guarantee or undertaking by a parent company where the local authority needs to protect against the liquidation of the developer company during the process or at the end of development?

There needs to be a legal distinction between the present current use value and the prospective future development value then the future value could be designated as a future fund on which a charge (as distinct from a mortgage).



It is reasonable for an indicative liability to be calculated and presented with a planning application. The payment timing must reflect the grant of consent and be tied to the certainty of cashflow generation i.e. occupation and sale.

Related Issues:

- No IL payable before grant of consent.
- When planning is granted if a payment is made then since this IL outgoing occurs ahead of any positive cashflows generated from the development, the cost of finance must be reflected (deducted).
- Securing the IL liability by means of a charge could cause project finance raising issues with lenders and needs careful consideration.
- Alternatives suggested such as bonds have their own financial implications which need to be factored into any development appraisal.
- If the substantial amount of the levy assessment is to be paid upfront this significantly changes the initial pitch where the levy was to be mainly paid on completion of the development. This change has significant cash-flow implications.
- All of these could reduce access to funding.
- The terms under which the lien on the property is released are critical to the functioning of the levy.
- Timing of trigger points throughout the project have a material impact on viability together with the phased release of the lien.
- The linkage with practical completion and the implications for reliance on major works by third parties all have risk and viability impacts.
- On large schemes there needs to be flexibility to adjust payment timing. Whilst it is right that additional value or loss results in IL adjustment it would be inappropriate in difficult market conditions for a high initial IL payment to create cash flow and housing completion stress.
- Liverpool report's assumption of 15 % IRR or Return on Cost at a similar level as a norm and/or 1% of GDV is hopelessly simplistic.
- Liverpool reports EUV with limited hope value uplift.

- Actual price paid which is what incentivises the landowner doesn't arise in the model.

**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.

Alternatives more broadly:

- As recognised above the IL is a long term measure a more immediate way of delivering infrastructure and affordable housing is to improve and properly resource the planning and s106 process.
- IL cash could be placed in escrow, or a bond and drawn down as blocks of say 10 homes were sold and occupied. This provides security of payment and releases cash as it is generated.
- s.52 agreements were derided, especially with accusations of planning permissions being bought.
- s.106 developed into a longer list of items that had previously been funded or delivered by local councils from taxation.
- The negotiation of affordable housing through s.106 should remain the solution in some cases.
- the imposition of a higher level of tax on housing delivery is only going to serve to reduce delivery, and that includes affordable housing.
- a direct tax paid by the landowner instead of IL.

**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

See Q 14 above.

There will still be a need for some kind of bond or escrow to cover the outstanding amount of the IL unless the risk is to be completely transferred to the local authority. This will have implications for viability assessments and the ability to fund schemes

There are plenty of regeneration schemes that are successfully funded and examples from those specialising in prudential borrowing and local authority financial modelling are best positioned to offer comments on this.

**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.

See also Q15 above.

No, an escrow deposit of bond would be more secure and simpler.

**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.

There should be an option for this to be agreed between the parties, but developers should expect a discount reflecting the cost of finance if it is paid ahead of the development generating sales revenue to make the IL payments.

See also earlier comments.

**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.

It is unlikely to be agreed by the developer unless and until the revenue generated from the development begins to flow to the amount that is required.

As referred in the opening comment in this section, if the early payment were to guarantee that the infrastructure would be delivered on time, it may de-risk the project rather than rely on the local authority to borrow against future receipts.

Yes, it would seem reasonable when an off-site access road needs to be upgraded and this cannot be controlled by condition, and the LA or HA is delivering those works, then by exception this may be reasonable.

An LPA borrowing against a possible future receipt, that for some reason might not arrive, does not sound prudent, reasonable or sensible. Would a commercial company secure lending approval on that basis?

See also earlier comments.

**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.

Where properties are sold on the open market, such as the majority of private dwellings, the sale price will be a near estimate of the GDV and should not present difficulties. Where properties are not sold and are being held as investments, there will be a requirement for a market valuation. This again should not present a difficulty.

Alternative Dispute Resolution Services such as arbitration or mediation could be incorporated into the IL regime to speed up the process where disputes over valuation arise.

Yes, the GDVs at the stages set out will be necessary. They will not necessarily save any time over viability assessments. They need to include all the same data and evidence to calculate GDV.

#### 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.

This is one of the fundamental challenges to the proposed IL.

1. There are significant questions as to whether local authorities will borrow against future IL receipts. This is perceived as a transfer of risk from the developer to the local authority, many of the latter being financially stretched already.
2. The timing of infrastructure delivery may not coincide with the development programme increasing the risk for the developer.
3. If the market were to stall or reverse the pace of construction would reduce and the delay in recouping the borrowed funds would increase
4. If the GDV were to fall the actual receipts would reduce but the local authority would still carry the debt.

5. If the infrastructure construction costs were to rise the local authority would be exposed to those increased costs.

Overall, there is considerable risk exposure being transferred which local authorities may not be happy to accept. This represents a fundamental issue which needs resolving.

Different local authorities have different levels of expertise and experience in these areas. The performance of local authorities who have adopted CIL will provide a good measure of capabilities and appetite for infrastructure delivery.

Timely delivery of infrastructure is ideally a positive outcome of the proposals and will in some sites need either (1.) Borrowing by LA against expected income, or (2.) IL payment early by developer. Someone carries the finance cost and risk in each case. If the developer cashflows such works, this needs to be accounted for in the IL payment (i.e. the sum reduced to reflect finance cost/early cashflow and risk)

However, many local authorities have borrowed in the past for specific projects and have paid those borrowings off in the long term. The expectation appears to be that IL will somehow reduce the risk and provide funding earlier. Since it depends on assessment at completion, which can of course be several years on, this borrowing could prevent the local authority from other borrowing to deliver existing services. The risk profile is not only too high but could well be detrimental to other areas of service provision.

Notwithstanding the above, if the Levelling Up Agenda is to be achieved successfully there needs to be a three-party agreement amongst the government, local authority and developer to achieve successful delivery that meets the economic plan for the area.

**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.

In certain local authorities this may be essential. Others may have the risk appetite and the capability to undertake infrastructure delivery projects, but it should not be assumed that all local authorities have the capacity to do this.

The commencement of a development may well require some local improvements, highways for instance. Would these be covered by an early payment of IL or in

addition? Those early stages of any cashflow are often devoid of income. How can a developer then fund additional costs prior to any sales? Borrowing more? Reducing later costs? Reducing the quality of the development? More small-scale boxes built by certain developers. Less activity by small and medium sized builders, yet again. Quality and size of housing?

It should also not be assumed that the developer would frustrate/damage the cashflow of the development resulting in failure.

**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.

The partial contribution by the developer could reduce the risk for both the local authority and the developer providing the local authority has the capability to deliver the infrastructure.

Yes, reintroduce some regional/wider area strategic and national planning for infrastructure. That should reflect up to date local plan land use requirements. Then collect the IL and use Homes England, Highways Agency etc to deliver the wider area infrastructure improvements, like the old days

All councils and government bodies to be made to have up to date infrastructure plans. However, this is not the case. Those plans would identify shortfalls and resolve how to fund.

As an example, Lincolnshire County Council received a confidential report from Anglian Water in 2018/19 that identified the areas of the county that had insufficient infrastructure. Where the costs identified were revealed to be too high, the logic would have been to allow more development to help fund it, or less to avoid making the problem bigger, or for the utility company to deliver improvements on infrastructure that they had failed to invest in for many years?

The report could have been replicated for other infrastructure. However, this was not the case. It could have been used to influence up to date local plans. It was retained as a confidential document and not shared with the LPA's in the area. There remains, generally, a total ignorance of the infrastructure needs and any planning required to deliver it. The consultations on each planning application are rarely connected to an infrastructure plan and are therefore limited in scale and use.

If an LPA had in place an up to date and costed plan, then each developer in the area would know how much to set aside for a contribution. Setting an IL without that is not the solution.

Some agreement with the local authority to borrow in some form of structured approach to achieve the desired outcome for both parties would be helpful.

**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.

It will depend on what obligations are placed on the local authority as a result of adopting an Infrastructure Delivery Strategy (IDS) both in terms of what is to be provided and within what timescale.

The question seems to assume that there will be sufficient land value uplift to be captured to fund the necessary infrastructure everywhere. It does not address the circumstances where a shortfall in funding arises which will be the case in many low value locations.

It will be important that the receipts of the IL are expressly used towards the list of infrastructure identified in the IDS and are not siphoned off for supporting other council services.

In principle, having a strategic infrastructure plan, defining priorities, costing and collecting IL and reporting upon actual spend in delivering the plan sounds like an effective solution. Nevertheless, historically most local and central government departments are notoriously ineffective at such tasks e.g. cost estimates massively exceeded. To secure public and industry confidence – QA oversight is essential and annual public reporting. It is essential such a system is transparent, visible and accurate.

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

There are multiple infrastructure providers all acting with autonomy. An Infrastructure Delivery Strategy without enforceability in implementation will not be effective.

Paragraph 4.21 states that the local authority's priorities will not be binding on a local authority. Will they be binding on the infrastructure providers themselves?

One of the risks raised is that less affordable housing than is currently delivered will be delivered under the IL. This is a critical proportion of the total IL to protect given its high level of importance and high level of visibility. Value for money in the 'right to require' will be an important consideration and clear guidance on the technical valuations associated with this will be essential to ensure smooth progress.

Paragraph 4.27 refers to the many demands on funding. We consider that the levy should be spent on infrastructure and its maintenance together with affordable housing. At a time of acute shortage of affordable housing in the country, funds raised through the IL should not be allocated to other activities.

The information required is in the evidence base for up-to-date plans. The problem is that a large proportion of plans are out of date and changing NPPF requirements has meant that LA's have ceased work on updating them. This means that a fundamental evidence base to support an up to date IDS is not in place.

**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.

Yes, the delivery of infrastructure is an integral part of the planning and implementation process. The local community needs to be able to meaningfully participate in its production and the priorities it sets to support the local plan.

Equally importantly is an effective way of engaging with the multiple autonomous infrastructure providers who have no obligation to co-operate in any of the priority setting. In addition to determining what infrastructure is required the absence of an effective way of co-ordinating infrastructure providers across local authority boundaries makes delivery challenging.

(Case Study – Houlton, Rugby available)

**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

We agree with all of the above but is an unrealistic and undeliverable list. The majority of LPA do not have the ability or expertise to do all of this.

**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

This is an extremely important part of the process identifying priorities among a very diverse set of infrastructure providers. It will also be important to establish responsibilities for programming. But the resource and skills are not available for this? Replacement local plans often lack well researched and developed transport plans.

We are concerned that this laudable aspiration places more burdens on already over stretched authorities. Some areas and utilities already work collaboratively e.g. multi utility trenches used. Others are far behind. It has been many years since most County

Highways Departments had a direct labour force and planned, designed and implemented highway works.

In other situations, County Councils compete with borough and districts for s.106 contributions. A more strategic regional infrastructure body may address this

**Case Study:** The LPA were told by the county council in 2021 that unless they made sure that every scheme paid the county council s.106 contributions the county council would not only object but would withdraw funding from a bypass. The LPA were then required to have in place an SPD that put education contributions at a higher priority level than affordable housing. The data behind the education contribution calculations was flawed and out of date, with the LEA withdrawing their request during the application process, having firstly requested in excess of £1m from one scheme.

**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.

It is the appropriate time at which to identify infrastructure and is what is envisaged in the streamlining of plan making and Levy assessment. Although it may seem an obvious approach the reality is that local plan making itself is under-resourced and the identification of appropriate levels of infrastructure is unreliable.

## 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.

We agree that the risk of affordable housing delivery being negotiated down on viability grounds will reduce. The issue is more whether in establishing the proportion of funds in the total IL pot, that this will equal or exceed the affordable housing delivery objective of the past; and how is this to be measured?

RICS members have submitted case studies to the joint RICS/DLUHC workshops demonstrating that less revenue and less affordable housing would be generated by the IL as currently designed.

The consequences will be that the risk will increase and IL will serve to reduce the delivery of affordable housing. Fewer schemes will come forward. Schemes that have an IL payable at the end will stretch on for longer, as developers defer payments.

**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

From a taxation perspective if you understand affordable housing as a tax on development then the application of a tax on the affordable housing element of the tax is double taxation and should not apply. By designing the IL as a single 'pot' of money collected from the development makes affordable housing more transparently a tax.

Alternatively, if you consider the infrastructural demand of affordable housing they are no different than market housing and in some cases may be even more, there is a case for applying it but it will come out of the same IL pot.

The issue of preferential treatment for 100% affordable housing schemes becomes complicated when it is considered that in mixed market/affordable housing the market housing may be cross subsidising the affordable housing.

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

If affordable housing really is truly a priority, is it not possible to ensure that local infrastructure is adequate to accommodate at least some additional development? A return to proper infrastructure and local planning is required; however, there is little in the IL proposal that will improve this without significant additional resources to local authorities.

**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.

The right to require should be left to the local authority which is more familiar with local economic conditions and affordable housing requirements. A blanket requirement set in central government will not address the site specifics of so many different schemes.

## Chapter 6 – Other areas

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

Yes, at the same proportionate level of the total pot (including affordable housing) as before. This accords with the principles of engaging with communities and highlighting the wider benefits of new development and change that some currently resist.

**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

The sum allocated should be at least the same. To create a step-change in public support for new development and progressive change, arguably it could be higher. Together with the Government's other policy objectives pursued through NPPF changes, front loaded viability in plan making, possible community land auctions, etc. the target is to capture a greater share of land value uplift. On the basis of this and Liverpool University's modelling there is a significantly larger sum of monies collected which should be spent locally with local control.

We caution, however, that as some of the consultation text acknowledges, the changes proposed are significant. LAs are under resourced and in some cases lack sufficient skills to adapt and implement efficiently these changes and the short-term effect of the 22.12.22 NPPF consultation has been counterproductive – work on many replacement local plans has ceased. Transition and implementation arrangements need to be a detailed part of the consultation. Without that the shock to the system could be disastrous.

**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?

Information needs to be shared on how many such areas exist and their size, population etc., Then an informative response could be provided.

The important missing components are that IL plans should like any project to be professionally prepared, based on supporting evidence, set out delivery timelines, prioritise *and* be sensibly costed. The plans will need updating and annual publicly accessible reporting for delivery against the plan for transparency

**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.

Selection A, current 5%.

**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 countryside 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?

**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.

There will be many soundly arguable circumstances where relief should apply but this would seem to be straying away from the fundamental design of the IL which is to maximise revenue and affordable housing provision.

**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.

**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.

This should be at the discretion of the local planning authority who can better balance the need to keep SMEs viable, housing developed and affordable housing provided. In some rural areas there are very distinct characteristics which need to be taken into account.

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

No.

**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.

We agree with having an effective enforcement procedure in place. It's design however needs to be carefully considered to ensure the appropriate levy is paid and that sales are not unnecessarily prevented.

## 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, it will, but it will take some time to go through the full cycle from plan making; infrastructure assessment; IDS preparation; rate setting; various stages of development to final completion and adjustment of levy charge. Selection of the appropriate representative T&L LPAs will be important in order to get valid transferrable knowledge. It is not clear what the T&L model will be compared with, what metrics will be used, how they will be reported and the results assessed.

**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.

There has been a long-term systemic failure to correctly and regularly assess what infrastructure is needed, where and when. In areas of market failure and no housing there will be no infrastructure. In areas of high value there will then be more

infrastructure. It is therefore very likely to be in significant conflict with the Equality Act 2010.

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