

## **Infrastructure Levy consultation**

Open consultation

### **Technical consultation on the Infrastructure Levy**

Published 17 March 2023

Deadline 9 June 2023

[InfrastructureLevyConsultation@levellingup.gov.uk](mailto:InfrastructureLevyConsultation@levellingup.gov.uk)

SUBMITTED ONLINE VIA CITIZENSAPCE

#### **Consultation outline**

- Primary legislation in Part 4 and Schedule 11 of the Bill provides the overarching framework for the Infrastructure Levy. Schedule 11 inserts new Part 10A into the Planning Act 2008, comprising of new sections 204A to 204Z1. It is based on the existing Planning Act 2008, Part 11 provisions, which provide for the CIL framework. As with CIL, the detailed design of the new Levy will be set out in regulations. The Bill introduces the following components of the Levy:
  - The Levy will be a mandatory charge.
  - Levy rates are to be set by charging authorities (generally the local authority), and when setting rates, they must take into account certain factors. This includes the viability of development in the area and the desirability that rates can deliver affordable housing at a level equalling or exceeding what developers deliver now in that area.
  - There is a process of examination in public of Infrastructure Levy charging schedules, in order for rates to be adopted.
  - The Secretary of State for DLUHC can intervene in the preparation of charging schedules in certain circumstances.
  - Charging authorities must publish an Infrastructure Delivery Strategy.
- Once the Bill reaches Royal Assent, these elements of the Infrastructure Levy will feature in primary legislation. Therefore, the government is not seeking views on these aspects of the Levy.
- This technical consultation seeks responses on those elements of design that will be delivered through regulations, made under the framework set out in primary. A summary of the lead proposals for the Levy, and corresponding chapters in the consultation document, can be found below.

#### **Chapter 1: Fundamental design choices: proposals**

- **Scope of the Levy.** The Levy will apply to all types of development, aside from where exemptions apply. Changes of use through permitted development rights will also fall within scope in a manner that ensures such schemes remain viable.
- **Types of infrastructure under the Levy.** Infrastructure 'integral' to the successful functioning of a site, such as on-site play areas, site access and internal highway network or draining systems, will be delivered by developers and secured through planning conditions. Where this is not possible, 'integral' infrastructure will be delivered through targeted planning obligations known as 'Delivery Agreements'. All other forms of infrastructure – 'Levy funded' infrastructure – will be paid for through Levy revenues. Questions 2 and 3 seek views on the definitions of 'integral' and 'Levy funded' infrastructure. Questions 4-6 seek views on spending the Levy on matters typically considered non-infrastructure items.
- **Use of Section 106.** S106 will be retained in the new system but for restricted purposes. Sites will come forward through three different 'routeways' depending on their character. In each routeway, s106 will play a role.
- The routeways seek to strike a balance between reducing negotiation and delay and allowing local authorities to secure the infrastructure and affordable housing they need. Questions 7 and 8 seek views from respondents on these routeways.
  - The core routeway. The majority of schemes will be subject to this routeway. The Levy will function as a cash-based system where rates and thresholds apply. S106 agreements will retain a restricted function, limited to securing matters that cannot be conditioned for.
  - The infrastructure in-kind routeway. On the largest and most complex sites, often with unique infrastructure requirements, s106 agreements can be used to deliver infrastructure as an in-kind payment of the Levy. The value of this agreement must equal or exceed what would have been secured in cash through a calculation of Levy liabilities.
  - The s106-only routeway. Sites where Gross Development Value (GDV) per m<sup>2</sup> cannot be calculated, or where buildings are not the main focus of development, such as minerals or waste sites, will not be subject to the Levy. Planning obligations will apply as now.

## Chapter 2: Levy rates and minimum thresholds

- **Rate setting.** Levy rates and minimum thresholds (below which no Levy is charged) will be set by the local authority. Rates and thresholds can be varied by the type of development (including brownfield and greenfield) and local authorities can create different charging zones. Levy charging schedules will be subject to consultation and public examination. Questions 11 seeks views on instances where some brownfield sites should qualify for offsets from final Levy liabilities, where the nature of a fixed-rate Levy could unduly effect scheme viability.

## Chapter 3: Charging and paying the Levy

- **Charging the Levy.** Levy liabilities will be based on GDV at the point of site sale or completion. The consultation seeks views on where circumstances may warrant payment of the Levy at an earlier stage of development.

- **Payment of the Levy.** Basing the Levy on GDV requires a novel proposal around Levy payments. Indicative liabilities will be calculated using Levy charging schedules. These will set out expectations of Levy liabilities that reflect assumed values of a site. A provisional payment of the Levy will be made close to scheme completion. A final adjustment payment can be used on completion incorporating final values to ensure correct liabilities are discharged. Views are sought on this process in response to Questions 14 and 15, and alternative proposals are welcomed.

#### Chapter 4: Delivering Infrastructure

- **Forward funding infrastructure.** Borrowing against future Levy proceeds will be permitted, including from the Public Works Loan Board, to facilitate the forward funding of infrastructure. Cash reserves can also be built up across sites. Questions 18-20 ask respondents to consider the mechanics behind infrastructure delivery under the Levy.
- **The Infrastructure Delivery Strategy.** Through a new Infrastructure Delivery Strategy, local authorities will be able to take a more strategic and unified approach to infrastructure planning and delivery. That includes how they expect to spend Levy proceeds to accommodate the needs of the community such as through the provision of GP surgeries and schools. The Infrastructure Delivery Strategy will be subject to examination, and the consultation seeks views on what should form the content of the document, including the process of input from infrastructure providers and local residents. Questions 24-29 seek views on the Infrastructure Delivery Strategy.

#### Chapter 5: Affordable housing

- **Affordable Housing.** The government is committed to delivering at least as much – if not more – on-site affordable housing as developer contributions do now. On-site affordable housing can be delivered as an in-kind payment of the Levy through a new ‘right to require’ which will enable local authorities to secure affordable homes as a proportion of levy liabilities. The consultation seeks views on the ‘right to require’ and in what circumstances exemptions from the Levy for register provider-led schemes could be appropriate.

#### Chapter 6: Other areas

- **The neighbourhood and administrative share.** Imitating provisions under the existing Community Infrastructure Levy legislation, both a neighbourhood share, and administrative share of the new Levy will be able to be retained to support funding of local community priorities and Levy administration respectively.
- **Exemptions and reduced rates.** The Levy will replicate some existing exemptions from CIL. The consultation seeks views on the case for other suitable exemptions or reduced rates, including a proposal to apply exemptions to qualifying small sites and publicly funded infrastructure. The consultation also seeks views on enforcement mechanisms.

#### Chapter 7: Introducing the Levy

- **Test and learn.** A reform of this scale represents a substantial change for housebuilders, local authorities, registered providers of affordable housing and other parts of the sector. That is why the Infrastructure Levy will be introduced through a phased ‘test and learn’ process over several years, which will support the effective implementation of the Levy, and provide local authorities and industry time to prepare and adapt to the change. Prior to national roll-out,

the government will monitor, evaluate, and improve the operation of the Levy. Local authorities that are interested in becoming a 'test and learn' authority are invited to express their interest.

- **Transition to the new system.** Sites permitted before the introduction of the new Levy will continue to be subject to their CIL and s106 requirements. We are considering whether further transitional provisions are needed to account for sites which are delivered over longer time periods. However, these sites will not be moved into the new Levy system. The consultation seeks views on whether the proposed approach will ensure effective transition and implementation of the new system.

## **Consultation questions**

**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 support the current practice of developer contributions secured via planning condition for certain kinds of work (e.g. archaeological assessment and evaluation required to mitigate impacts of development) AND certain offsetting works which create public benefits, including via the provision of infrastructure such as interpretation displays to allow residents to see or learn about the historic environment on the site. Where these things are best delivered by developers directly, they should fall outside the Infrastructure Levy (IL).

**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 recognised that clarity on what is to be part of the Levy-funded infrastructure and what is not will be required. However, we are nervous about the potential for any solution to inadvertently restrict opportunities.

On balance, option A 'a set of principles established in regulations or policy' presents the most reasonable option as it allows for individual elements of infrastructure on a site to be determined, according to those principles, for each specific site. For example, a site with specific historic environment impacts may present opportunities or responsibilities for infrastructure delivery which conform to those principles.

We would look forward to a more detailed discussion about what principles would be, but our hope is that IL funding could help local authorities to recognise the responsibility of developers to fund infrastructure beyond the scope of what is currently delivered in terms of site-based mitigation of harm to the historic environment. For example, a large development site which yields a large amount of excavated material could, via an infrastructure levy, be required to contribute to the costs of

maintaining (or developing) the archaeological archive facility at which that excavated material will be stored, made available to researchers, or displayed to the public.

Option B is more restrictive and therefore less attractive. Firstly, it would be potentially complicated to define typologies which clearly explained the difference between 'integral archaeological work' and 'levy funded archaeological work'. The list would also need to be very long to include all potentially relevant things such as 'regional synthesis of archaeological data', 'upkeep of archaeological archive centres' and 'delivery of interpretation or access infrastructure on land in adjacent ownership' - to list but a few examples from our particular area of interest. More likely is that the list would be too limited, and items not on that list - even if acknowledged to be non-exhaustive - would face an uphill battle to be included in any Levy funded activity.

We support a degree of local freedom to provide the infrastructure and services that are valued and needed locally, as per Option C. However, we believe that it would help to reduce the likelihood of blind spots in local provision and improve national consistency if this local discretion was implemented beneath national guidelines. It would, potentially, be helpful to include a caveat in national guidelines for 'additional infrastructure needs identified locally' to ensure local authorities are never restricted from using the levy to fund appropriate local needs.

**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.**

Yes. It is vital that the Levy includes the potential for developers to contribute to the provision of services or upkeep of existing infrastructure where their development creates additional pressures to those services.

For example, developments which produce large quantities of excavated archaeological material, currently do not commonly pay any contribution towards the upkeep of archive facilities beyond a small fee to 'deposit' the material - a charge which covers only a tiny fraction of the actual cost of processing and storing material. We believe that it should be possible, under the levy, to ensure that developments which place a particularly large additional burden on archaeological archive facilities should be asked to contribute to the costs of running those facilities. This would help to overcome the current market failure which has led to many archive centres being completely full to capacity, and the subsequent crisis and backlog facing these facilities.

In addition, one way in which Infrastructure Levy could help to improve public benefits resulting from archaeological interventions on development sites, would be by enabling the funding of research synthesis. This means, instead of simply paying to excavate remains on the development site, where appropriate, it may be more beneficial to divert a portion of the overall funding for archaeological excavation to the wider synthesis of results from the development site and other sites. The Infrastructure Levy could create regional pots of funding for research institutions to undertake work which could make much better use of the enormous wealth of information generated through development-led archaeology if enabled in this way.

These options are, in theory, open under s.106, but are rarely utilised as expectations about what s.106 can be used for are fixed. The Infrastructure Levy provides an opportunity to introduce guidance which would clarify and encourage greater recognition of these uses.

However, we would support some restriction on the use of IL funds on other services. We are aware of the problem of funds intended to compensate for additional pressures of new development on local areas being routinely spent on other services which may be better funded by other means.

**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.**

We agree that national and local priority issues, including the provision of affordable housing, will need to be dealt with as priorities, and it may be helpful to set expectations on this. However, we also hope that there will remain flexibility and capability within the Infrastructure Levy to pick up other matters, particularly where there are strong local reasons.

For example, we would anticipate that only a very small minority of IL developments would include historic environment or archaeological elements, where there were direct impacts and where there are opportunities that can only be met through use of Levy funding. For example, a development which is on or adjacent to a Scheduled Monument may present unique opportunities for the use of Levy funds. This was the case with s.106 funding for infrastructure at Thorn Peel Hill mott, near Doncaster, where the development for a care facility included a s.106 payment to fund infrastructure on the scheduled monument, designed to enable care home residents to access the structure and interpretation, in order to increase wellbeing outcomes of the development and offset the impact on the heritage asset with additional public benefit. We would like the IL system to be better at enabling this kind of intervention and other off-site contributions to the historic environment, where specific opportunities are identified.

**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.**

As described above, we support a broad definition for what should be considered infrastructure, but while we do not wish to restrict local authorities' ability to fund other relevant services, we are aware of the problem of funds intended to compensate additional pressures of new development on local areas being routinely spent on other services which may be better funded by other means.

**Question 11: Is there a case for additional offsets from the Levy to facilitate marginal brownfield development coming forward? Please provide a free text response to explain your answer where necessary, using case studies if possible.**

Unsure. There may be a case for local authorities to use Levy offsets to facilitate the development of certain brownfield sites. However, it must be made clear that brownfield sites, while many may be preferable sites for developers from the perspective of local authorities and communities, also bring the same infrastructure pressures. Brownfield sites will frequently have higher archaeological interest than greenfield sites and we would be wary of any procedure which sacrifices too much to inducements to brownfield development.

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

Agree. We welcome the proposals for the Infrastructure Delivery Strategies to set out, locally, how the Levy will be spent. However, we also think that national guidance or regulation for developing Infrastructure Delivery Strategies will be needed to guide local authorities and encourage or highlight options.

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

We would hope that Infrastructure Delivery Strategies (IDS) would make reference to local historic environment goals, as set out in local plans, and articulate the scope for particular IL funding options to supplement - or improve the value delivered as a result of - non-Levy funded developer contributions. For example, where a local archive capacity issue is identified locally, for this to be sited as a strategic opportunity in the IDS.

We would also welcome references to any relevant strategic objectives and documents (e.g. regional research strategies).

**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

**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

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

Agree. Some infrastructure requirements will be identifiable at the local plan stage, for example, archaeological archive capacity issues will be long term known issues. Individual allocated sites may also have identifiable requirements. For example, for sites on which there are known heritage assets it should be possible to identify possible requirements/opportunities for IL funding. We would encourage local plan allocations to identify these wherever possible in order to provide greater certainty to developer. As a general rule, we encourage up front evaluation of sites being submitted for allocation in a local plan and would welcome any strengthening of requirements to do this, especially if it improved IL outcomes.

However, some requirements will not be able to be identified at local plan stage, and as such it will be important to retain an element of flexibility in responding to issues that arise at the point of application and during development management. For example, the discovery of unexpected archaeological remains following an evaluation, or in the course of construction may present new opportunities or requirements.

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

Agree.