

COUNCIL BUSINESS COMMITTEE

Response to the Technical Consultation on the Infrastructure Levy 1 June 2023

Report of Chief Officer – Planning and Climate Change

PURPOSE OF REPORT

To inform members of the national consultation about the proposed Infrastructure Levy and to consider the draft response at Appendix 1 as the formal response from Lancaster City Council.

The Department for Levelling Up, Housing and Communities has published proposals to introduce a national Infrastructure Levy to reform the existing system of developer contributions which consists of Section 106 planning obligations and where adopted, the Community Infrastructure Levy. The proposed Infrastructure Levy would be a national mandatory system for collecting contributions from developers to support the provision of the infrastructure necessary to mitigate the impacts of development. The Infrastructure Levy would be calculated as a proportion of Gross Development Value and used by local authorities to deliver infrastructure.

The consultation is seeking views on the design of the Infrastructure Levy and of the regulations which will set out the detail. A further consultation on the drafting of the regulations will follow. The consultation documents consist of the 'Technical Consultation on the Infrastructure Levy' which explains the proposals and poses a series of questions and 'Exploring the Potential Effects of the Proposed Infrastructure Levy'. Both documents can be found using the link at the end of this report.

The draft response to the consultation is required by the 9th June 2023. The proposed response is appended to this report.

This report is public

RECOMMENDATION

- (1) That the draft response at Appendix 1 of this report is submitted to the Department for Levelling Up, Housing and Communities as the formal response from Lancaster City Council.**

1.0 Introduction

- 1.1 On the 17th March 2023, the Department for Levelling Up, Housing and Communities (DLUHC) published the Technical Consultation on the Infrastructure Levy (the Consultation)

seeking views on the design of the proposed Infrastructure Levy (the Levy) and the Regulations.

1.2 The Levelling Up and Regeneration Bill (the Bill) seeks to reform the existing system of developer contributions which consists of Section 106 planning obligations and where adopted the Community Infrastructure Levy (CIL) with a single system for the collection of contributions. Part 4 Schedule 11 of the Bill provides the framework for the Levy. 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). When setting rates, they must consider the infrastructure necessary to mitigate the impacts of development, viability and rates which can deliver affordable housing at a level equalling or exceeding the level currently delivered by developers.
- Infrastructure Levy Charging Schedules will be examined in public before rates can 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, the above elements will feature in primary legislation. The government is not seeking views on these aspects. The technical consultation seeks responses on those elements of design that will be delivered through regulations. There will be further consultation of the detailed drafting of regulations in the future.

1.3 The proposals for the Levy contained within the Consultation have been informed by the responses received to the Planning for the Future White Paper. The council's response to the White Paper was considered by the Business Committee on 15th October 2020.

1.4 The recommendation from officers is that Lancaster City Council (the council) submit a formal response to the Levy Consultation. The draft response is attached at Appendix 1 of this report.

2.0 Proposal Details

Key Proposals of the Levy

2.1 The headline proposals include:

- The Levy will be mandatory.
- It will be charged on the Gross Development Value (GDV) at completion per square metre above a minimum threshold.
- Local authorities will set levy rates and thresholds based on local circumstances including the infrastructure required to mitigate the impacts of development within a local plan, affordable housing requirements and viability.
- Variable rates may be set for different areas, typologies of land and development types within a local authority, to reflect market areas and viability.
- Levy rates are to be set out in a charging schedule which will be subject to Examination in Public by a planning inspector before the levy can come into effect.

- Local planning authorities will need to prepare an Infrastructure Delivery Strategy (IDS) setting out the types of infrastructure that the Levy will be expected to contribute to, the expectation on affordable housing and how infrastructure delivery will be prioritised. The IDS will also set out what proportion of the Levy the local authority will expect developers to contribute as on-site affordable housing, this housing will be subject to a right to acquire.
- The Levy will not apply to integral on-site infrastructure which has no wider community benefits. This may include on-site roads and paths, playgrounds, sustainable drainage, landscaped areas etc. These will continue to be secured by condition.
- It is proposed to include exemptions for affordable housing, self-build housing and residential annexes.
- Local authorities will be responsible for delivering infrastructure at the time it is needed to support and mitigate the impacts of development. As the Levy will be paid when development is at, or close to completion, there will be a time lag before funding starts to flow. Local authorities will be able to borrow against future Levy receipts to ensure infrastructure is delivered when required.
- It is proposed that a proportion of the Levy from each site will be transferred to the parish or town council where it is located for use to deliver local infrastructure projects.
- The Levy is not anticipated to be fully introduced for ten years. It will be trialled before full introduction.

The consultation provides further detail regarding the above proposals and is structured around a series of consultation questions.

Scope of the Levy

- 2.2 The Levy will be a mandatory non-negotiable regime and the scale and type of developments which make contributions can be increased. The government considers this will increase the development which makes contributions and the amount contributed as developers will need to take the Levy into account when negotiating land payment.
- 2.3 The proposals are intended to provide a pool of funding for infrastructure arising from the cumulative impacts of development, in the same way as CIL. Such infrastructure could include, expansion or provision of new schools, sustainable travel improvements and provision, road provision and improvements, off-site flood mitigation, and amenity infrastructure. Unlike CIL, where affordable housing remains negotiable at application stage, the calculation of the Levy will also include the cost of delivering affordable housing provision. Local authorities will be able to require a proportion of the Levy to be delivered on site in-kind in the form of affordable housing. Some infrastructure will be required to be delivered to ensure a site can function, for example internal roads/footways/cycle paths, drainage, and amenity space. Such integral infrastructure will be incorporated into the cost of a scheme and delivered by a developer. The Consultation seeks views on the type of infrastructure which will be funded by Levy contributions, which will be considered integral and how these should be set out, for example in regulations or as a set of national or local principles.
- 2.4 The Consultation sets out three routes to infrastructure delivery through the Levy and seeks view on the various roles:
- *Core Levy* where most development will be subject to the Levy and infrastructure will be delivered by local authorities. Integral infrastructure will be delivered by developers.

- *In-kind* which is proposed to be retained for large and complex sites. The value of the in-kind provision must be equal to or above the Levy contribution. The Consultation asks for opinions on various thresholds.
- *S106s* would be retained for the minority of cases, for example minerals sites.

Levy Rates and Minimum Thresholds

- 2.5 The Levy will be applied as a percentage figure charged on the GDV of a scheme above a minimum threshold. Levy rates will be charged on the internal area (m²) of a development as a percentage of the final GDV (£ per m²) above the minimum threshold.
- 2.6 The Consultation sets out various approaches which balance viability and land value capture. Rates would be set using typologies and using a buffer in a similar way to how Local Plan and CIL viability is currently set and consider the value of existing contributions. It proposes that local authorities can set stepped rates which increase in the future as the Levy beds in. It will also allow the setting of differing rates to reflect market areas and values within a district. Existing floor space, brownfield and regeneration schemes could also be treated differently. The Consultation seeks views on including 'permitted development' within the scope of the Levy, and how marginal brownfield land should be dealt with.
- 2.7 It is proposed that local authorities would set out rates in a charging schedule supported by evidence which would be consulted upon and subject to public examination. Minimum thresholds of GDV would be indexed to reflect changes over time.

Charging and Paying the Levy

- 2.8 It is proposed that Levy calculation and payment will be through a three-stage process. An indicative liability calculation would be submitted with a planning application. A land charge would be placed on the land to ensure future payment. Post-decision/commencement but before the development is occupied there would be a provisional liability calculation and payment. A proportion would be paid at this point and the land charge removed. The final payment would be made on completion or once the development is sold based on the GDV at this final stage. Depending on GDV additional payments may be required or the local authority may need to make repayments. The Consultation seeks views on the proposed process.

Delivering Infrastructure

- 2.9 The Levy seeks to ensure infrastructure is delivered at the right time. Local authorities will be expected to produce an Infrastructure Delivery Strategy which will set out infrastructure spending priorities and the timing of delivery to support development and mitigate the impact of cumulative development. Significant engagement will be necessary with stakeholders to determine the necessary infrastructure, costs, timescale for delivery and alternative funding opportunities. To ensure infrastructure is delivered at the right time, local authorities will be able to borrow funds against the future Levy proceeds and pass this onto infrastructure providers. The Consultation seeks view on the mechanisms for delivery.

Delivering Affordable Housing

- 2.10 It is proposed that the affordable housing requirements will be built into the Levy calculation. Local authorities will set out the proportion of the Levy to be provided in-kind on site and/or a proportion which will be required as a contribution specifically for affordable housing provision. Discounted Levy rates for 100% affordable housing schemes are proposed. The system is intended to limit the scope for negotiation and ensure more

affordable housing is provided. The Consultation seeks views on whether this will be effective.

The Neighbourhood Share

- 2.11 CIL provides a proportion of the contributions to the town or parish council in which a development is located. This can be used to address local infrastructure issues. The consultation seeks view on whether this should be retained.

The Administrative Portion

- 2.12 Views are sought on the proportion of the Levy which may be used for administration of the system.

Exemptions and Reduced Rates

- 2.13 CIL includes exemptions for example, affordable housing, self-build housing, charitable development. The Consultation also considered whether small sites should be exempt and whether publicly funded infrastructure should be subject to contributions. The Consultation seeks views on exemptions.

Enforcement

- 2.14 The local land charge is intended to ensure payment are made. It is acknowledged that this may not always be effective, and it is expected the use of Stop Notices would be available for use by local authorities. The Consultation seeks views on the effectiveness of the measures proposed.

Introducing the Levy

- 2.15 Views are sought on the proposed ‘test and learn’ approach which would involve some authorities being pilots for the introduction of the Levy.

3.0 Details of Consultation

- 3.1 Due to the timing of the consultation and the elections there has been no consultation.

Options and Options Analysis (including risk assessment)

	Option 1: To formally respond to the Consultation with the draft at Appendix 1 of this report.	Option 2: To amend the draft response at Appendix 1 and submit the amendments as the formal response to the Consultation.	Option 3: To provide no response to the Consultation.
Advantages	The view of the council will be considered when the government proceeds with designing the Levy and Regulations.	The view of the council will be considered when the government proceeds with designing the Levy and Regulations.	No advantages.

Disadvantages	The response may not result in the issues raised being dealt with in the final design of the Levy or drafting of Regulations.	The response may not result in the issues raised being dealt with in the final design of the Levy or drafting of Regulations.	The views of the council will not be taken into account.
Risks	The design of the Levy and drafting of Regulations may not address the issues raised by the council.	The design of the Levy and drafting of Regulations may not address the issues raised by the council.	The views of the council will not be taken into account and future opportunities to feed into the process may be lost.

4.0 Officer Preferred Option (and comments)

4.1 Option 1 is the preferred option. This option will ensure that the council provides views on the design of the Levy and the drafting of Regulations. A further opportunity to comment is expected to be available once the Regulations have been drafted.

5.0 Conclusion

5.1 It is recommended that the proposed response set out in Appendix 1 is submitted as the councils formal response to this consultation.

<p>RELATIONSHIP TO POLICY FRAMEWORK</p> <p>The councils Corporate Policies (Jan 2022) include securing investment for the district, transitioning to an accessible and inclusive low-carbon and active transport system, supporting flood resilience and developing housing to ensure people of all incomes are comfortable, warm and able to maintain their independence.</p> <p>The Lancaster District Local Plan includes a range of policies which seek to deliver sustainable development which mitigates the impacts on infrastructure and provides affordable homes.</p> <p>The Consultation relates to how development will support and fund the delivery of the infrastructure needed to mitigate the impacts and will have implications for how this is addressed in policy, guidance and practice in the future.</p>
<p>CONCLUSION OF IMPACT ASSESSMENT (including Health & Safety, Equality & Diversity, Human Rights, Community Safety, HR, Sustainability and Rural Proofing)</p> <p>Responding to the Consultation provides the council with the best opportunity to raise any issues relating to these matters.</p> <p>The implementation of the Levy will pass through the Parliamentary system, which includes impact assessment and will subsequently be implemented by the council using the direction given through national regulation and policy.</p>
<p>LEGAL IMPLICATIONS</p> <p>None identified.</p>
<p>FINANCIAL IMPLICATIONS</p>

None identified at this stage.

OTHER RESOURCE IMPLICATIONS

Human Resources:

None identified.

Information Services:

None identified.

Property:

None identified.

Open Spaces:

None identified.

SECTION 151 OFFICER'S COMMENTS

The s151 Officer has been consulted and has no comments to add.

MONITORING OFFICER'S COMMENTS

The Monitoring Officer has been consulted and has no comments to add.

BACKGROUND PAPERS

Background Files

The consultation documents can be found here:

[Technical consultation on the Infrastructure Levy - GOV.UK \(www.gov.uk\)](http://www.gov.uk)

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Appendix 1 – Draft Lancaster City Council Response to the Technical Consultation on the Infrastructure Levy

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*
- *Buildings which people do not normally go into - Yes*
- *Buildings into which peoples go only intermittently for the purpose of inspecting or maintaining fixed plant or machinery - Yes*
- *Structures which are not buildings, such as pylons and wind turbines. Yes*

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

Response:

Yes.

The thresholds and types of development above will ensure that development which has a significant cumulative impact on infrastructure will contribute. There must however be scope to secure S106 contributions and infrastructure from development which does not fall within the definition, where it is necessary to address specific development impacts.

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.

Response:

Yes.

Where infrastructure is necessary to make a specific development acceptable and/or where infrastructure integral to a site, this should be provided by directly the developer. The examples of ‘integral’ infrastructure are noted, however, there may also include instances where a specific development requires, for example, on-site school provision, GP provision or off-site highway improvements which are necessary to mitigate the impacts of a specific development. There must be a mechanism in place to ensure that such infrastructure can be delivered as either integral infrastructure or ‘in kind’.

There must also be scope for the delivery of infrastructure on a specific site which may be required to serve wider communities and development beyond the site. For example, a site may be the most appropriate location for a new school to serve a wider area. There must be a mechanism for the provision of land and the school infrastructure to be required and delivered either in-kind, via contributions or a combination of both, using funds accrued from elsewhere.

The ongoing management and maintenance of SuDS/open space and other on-site infrastructure should also remain subject to S106s.

The Levy funded infrastructure at paragraph 1.22 should also include indoor leisure and recreation facilities, community facilities such as community centres, youth centres, clubs and facilities.

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.*

- a) *A set of principles established in regulations or policy. For infrastructure to be considered 'integral'.*
- b) *A nationally set list of types of infrastructure that are either 'integral' or 'Levy-funded' set out in regulations or policy.*
- c) *Principles and typologies are set locally.*

Response:

The most appropriate approach would be a mixture of approaches:

'a) A set of principles established in regulations or policy'; and 'c) Principles and typologies are set locally'.

This would allow the general principles to be established nationally, with local principles which are bespoke and more detailed to address infrastructure requirements within communities. A potential issue and area of disagreement is where the distinction between 'integral' infrastructure to be built on site by a developer and Levy funded infrastructure lies both at plan making and application stages. The nationally set principles must be clear and include lists for local authorities to adopt, adapt or add to as necessary.

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.*

Response:

Yes.

However, contributions should only be available to provide services where they are not funded by alternative means such as government grants, payments, or other tax receipts. It may be appropriate for contributions to support services where there is a short-term funding gap, however once the funding is in place and if this is back dated, the funds should be recouped into the Levy fund for the provision of infrastructure. If this is permitted, mechanisms must be in place to ensure that funding for services is not duplicated. It must be made clear that use for services is at the discretion of the local authority, they are not required to address funding gaps and that use of the Levy for services must not prejudice the delivery of infrastructure and affordable homes.

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.*

Response:

Yes.

The existing mechanisms provide for infrastructure and affordable housing provision first, this should continue to ensure that the elements required to support and deliver a development are funded through the Levy. The contributions received through the Levy are unlikely to be significantly greater than those received through CIL or S106. It is therefore not envisaged that there would be sufficient funds available to fund the necessary infrastructure, provide affordable housing and additional services.

Priorities should be set through policy to ensure that they reflect the view of local communities and meet the local needs.

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.*

Response:

Yes.

Non-infrastructure items could include addressing climate change through retrofitting of existing properties, flood risk mitigation and resilience measures un-related to planned growth (up-stream measures to protect a wider area), strategic provision of EV car/bike hubs/sharing facilities and services.

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.*

Response:

d) Local authority discretion.

The infrastructure required in kind will be dependent upon site circumstances. Sites which fall within the suggested 'low threshold' may require the provision of services and facilities (referred to in the list at paragraph 1.22) on site. For example, sites within the low threshold may require the provision of schools, local service centres etc, especially if the site is the most appropriate location for new provision required to address the cumulative impacts of planned development. It may be that a specific development would be required to deliver elements in kind with the remainder provided through contributions from other sites.

The infrastructure to be delivered 'in-kind' and that via the Levy route would be explored during the allocation process and expressed in the Infrastructure Delivery Strategy. When allocating sites, local planning authorities will need the ability to differentiate between infrastructure which is to be provided in-kind, wider infrastructure which would be funded from a range of sites and delivered incrementally and in combination.

The combination of Levy payments, in kind solutions and affordable housing right-to-acquire, could potentially be complex and onerous for local authorities to determine at plan making stage and to operate. Clear guidance about the type and extent of evidence required to support the Levy through examination will be needed for both local authorities and stakeholders. If the evidence required is onerous, for example detailed plans and costs for infrastructure, the time

and expense for local authorities could be significant resulting in delays to adoption of plans and the Levy. A potential issue and area of disagreement is where the distinction between 'integral' infrastructure to be built on site by a developer and Levy funded infrastructure lies both at plan making and application stages. This could add to the complexity and length of examinations.

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.*

Response:

It is not clear whether it is intended to include a route which provides for a combination of Levy and in-kind provision. This is required to address circumstances where a site may require on site delivery, for example provision of a school which will serve a wider area than simply the application site and Levy contributions towards wider active travel and highway infrastructure. S106 agreements will be required to ensure that affordable housing remains affordable in perpetuity, set out discount rates, ensure funds are recycled to provide alternative affordable housing where shared ownership owners staircase out or where rent to buy properties are bought and to set out eligibility criteria.

Question 9: *Do you agree that the Levy should capture value uplift associated with permitted development rights that create new dwellings? [Yes/No/Unsure].*

Response:

Yes.

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.

Response:

No.

All permitted development rights that result in a new dwelling plus other uses which will generate additional occupations, more intensive use and movement should be subject to the Levy. This will ensure that where there are impacts, for example where traffic and/or pedestrian/cycle movements increase, the Levy can be charged and used to provide infrastructure.

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?*

Response:

Proposals brought forward through permitted development rights should be within the scope of the Levy to ensure that the necessary infrastructure can be delivered. Development has the same impacts on/requirements for infrastructure regardless of whether they need planning permission or benefit from permitted development.

The rates (types of development/land) and minimum thresholds (paragraph 2.21) and maximum percentage rate should be at the discretion of each authority. Local authorities are best place to determine the priorities and infrastructure requirements associated with developing sites. Including a buffer as referred to at paragraph 2.14 bullet point 3, is likely to result in lower contributions than at present. Whilst when setting CIL rates, a buffer is used, this is not applied when negotiating S106 contributions. Where there is a viability case put forward by a developer, S106 contributions are calculated using the maximum margin for viability. There is a risk that including a buffer will remove this margin and result in lower overall contributions.

Paragraph 2.14 bullet point 4 refers to using the value of present developer contributions as a starting point. The present value does not however reflect the contributions required to deliver the necessary infrastructure due to a range of reasons including, viability, uncertainty and expectations around land value, lack of engagement/justification/evidence by infrastructure providers, pressure from developers and the weight attached to housing delivery where authorities do not have a 5-year land supply. Using existing contributions is therefore not an appropriate starting point.

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.*

Response:

Unsure.

Brownfield sites do not always incur additional costs and where they are serviced there may be lower costs than those associated with developing greenfield sites. Greenfield sites can be more costly to build due to lack of services, levels, biodiversity net gain requirements etc.

The proposed method of using a percentage of GDV as the Levy rate, will not be effective in reflecting the wide range of costs associated with the development of PLD without local authorities carrying out significant amount of background evidence on individual sites. Some PDL sites may incur significant costs associated with mitigation whereas others may benefit from services and will not incur additional mitigation costs. To collate evidence which reflect the wide range of costs, a local authority may need to carryout contaminated land surveys and mitigation schemes, work to determine costs of demolition and disposal etc. Local authorities do not have the resources to bare such additional costs at plan making/Levy setting.

The proposed charging framework at paragraph 2.21 encourages demolition and replacement over the re-use of buildings. However, the costs of retrofit can be higher than those associated with demolition and new build, making regeneration the less viable option. As demolition and re-build often result in higher levels of embodied carbon, conversion and re-use should be supported to ensure carbon emissions are minimised.

To reflect the wide range of brownfield/PDL sites and their costs, there will potentially be a need for many different offsets for different typologies and on a site-specific basis. This could be overly onerous and expensive for local authorities to evidence at Levy setting stage, complicated to administer and for developers to determine which off-set a site falls within.

If offsets are permitted, they should be at the discretion of local authorities which are best place to determine priorities and assess the implications in relation to differing typologies.

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]

Response:

Disagree.

- The use of different Levy rates and minimum thresholds on different development uses and typologies [Strongly Agree/Agree/Neutral/Disagree/Strongly Disagree/Unsure]

Response:

Unsure.

- Ability for local authorities to set 'stepped' Levy rates [Strongly Agree/Agree/Neutral/Disagree/Strongly Disagree/Unsure]

Response:

Disagree.

- 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]

Disagree.

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

Response:

Charging on GDV may enable increased contributions to reflect increases in the value of a development but this will only be effective in a rising market. Including a buffer as suggested, may reduce the overall contributions to infrastructure. While a buffer is currently included when determining CIL rates, S106 contributions can take contributions up to the viability margin on individual sites.

Charging on GDV does not allow for situations where the costs of a scheme rise but the GDV does not.

To reflect the various markets around a single district and the costs associated with the development of various uses and typologies will create a complex range of Levy rates. To effectively take account of the variety of costs associated with a wide range site and development typologies, local planning authorities will need to carryout extensive background evidence. This will result in increased costs and time in preparing Levy rates incurred by local authorities. Local authorities do not have the resources to undertake additional detailed evidence. The process of Levy setting will result in a requirement for significant levels of negotiation and potentially disagreement between local authorities, landowners, and developers with regard to existing land

value, reasonable uplift expectations, development costs and reasonable profit levels. Where agreement cannot be reached between the differing aims to ensure the delivery of infrastructure and profit, examinations may be complex and lengthy.

Setting different rates to reflect market areas, even with a district will exacerbating divide in infrastructure provision between high and low value areas. This will be exacerbated further at national level.

If stepped rates are to be included, they should be charged at the point of payment not at the date that a planning permission is granted. If a rate is to be determined at the date a planning permission is granted, this could incentivise developers/landowners into gaining planning permission to land bank.

If lower rates are set for typologies, there is a question mark over how to fund infrastructure where there are no or less Levy contributions. It is not clear how such a funding gap would be remedied.

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.

Response:

Unsure.

Whilst the process may be effective, local planning authorities will need to have increased access to valuation expertise to assess the GDV at application stage. This will have resource (expertise and cost) implications which will need to be addressed. Where expertise are not in house, there may be issues around securing such expertise, and avoiding conflicts of interest.

There are potential implications the way GDV will have to be forecast in advance of the sale of projects in order to estimate Levy liabilities. Valuations, particularly on assets that will not be sold may add complexity and uncertainty as markets fluctuate.

There is a prospect of disputes over GDV valuation. A mechanism for resolving such disputes will be necessary. This may add cost of delays for both local planning authorities and developers.

Delaying payment to post completion, could enable unscrupulous companies or individuals to avoid payment by dissolving companies or declaring bankruptcy. Payment through a series of instalments should be the default position to ensure that there are no incentives to take measures to avoid payment at the end of a project.

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.

Response:

Payment should be phased throughout a development. This will ensure that were possible, infrastructure can be delivered incrementally, and the risk of non-payment is minimised. It will also ensure that where necessary the balance of financial contributions and in-kind contributions can be adjusted to reflect changing GDV values.

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*

Response:

No.

This will encourage unscrupulous companies or individuals to avoid payment by dissolving companies or declaring bankruptcy.

A more effective method, especially on large schemes would be to amend the land charge to reflect phases of development. For example, include a land charge on the whole site until the provisional payment is made prior to development commencing then remove the land charge for the first phase once at this point but retain it for subsequent phases. As subsequent phased payments are made the land charge could then be removed incrementally.

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.*

Response:

No.

The risk of avoidance, particularly in respect of large sites will be significant if the land charge is removed following the provisional payment. A phased approach to payment and removal of the land charge would be a more appropriate route.

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.*

Response:

Strongly agree.

The risk of avoidance, particularly in respect of large sites will be significant if payment is delayed until completion.

It should also be noted that the risks to local planning authorities and high tier authorities charged with providing infrastructure will be significant if payment is delayed until completion. There is also a risk that with payments delayed until completion, there will be a reluctance by infrastructure providers to deliver the necessary infrastructure.

A phased approach to payment at specified points throughout a development would be an appropriate route. Provisional or phased payments should not be at the discretion of the developer as suggested at paragraph 3.15 but set out in a payment or phasing schedule by local planning authorities in a similar way to the current CIL system. Payment in phases will minimise the borrowing liabilities for infrastructure providers by enabling part payment of Levy contributions

throughout the development. This will reduce the risks to infrastructure providers and encourage implementation of infrastructure earlier on within the development cycle.

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.

Response:

Yes.

A phased approach to payment at specified points throughout a development be an appropriate route. This should not be at the discretion of the developer as suggested at paragraph 3.15 but set out in a phasing schedule by local planning authorities in a similar way to the current CIL system.

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.

Response:

No.

There should be requirement for developers to provide valuations at the indicative liability stage if it is anticipated that the contributions will be much lower than anticipated within the charging schedule. This will enable local authorities to consider the implications for infrastructure provision, borrowing requirements and delivery.

Sales data does not necessarily reflect GDV accurately as they may omit incentives or omit additional payments for enhancements.

A mechanism to determine value of in-kind infrastructure and resolves disputes is needed.

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.

Response:

Disagree.

Due to the delay in payments the risk posed to authorities borrowing and delivering infrastructure will be significant. This is likely to deter delivery within the earlier stages of development and result in delays. The risks are greater with two tier authorities where the lower tier collects the Levy and the higher tier delivers infrastructure. In these circumstances there is the potential for conflicting priorities and disagreement between authorities and infrastructure providers with regard to costs, delivery mechanisms and timing of delivery. Developments may therefore be nearing completion or potentially complete for some time before the necessary infrastructure is in place. Where the infrastructure Levy is insufficient to deliver all necessary infrastructure, there is a risk that it is not delivered.

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.*

Response:

Strongly agree.

Where off-site infrastructure is necessary to make a development acceptable, up-front payments are essential to ensure that infrastructure is delivered in a timely manner to address the impacts of a development. This is especially the case with the provision of sustainable travel (bus provision, footpath and cycle provision) as having these in place prior to occupation and/or early within development is essential in encouraging use and delivering modal shift. The same may apply to education provision where there is a deficit of places to meet the needs of new residents.

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.*

Response:

A system of phased payments, partially set out in charging schedule and partially site dependant informed by the Infrastructure Delivery Strategy for specific sites would enable a flexible payment mechanism to ensure the necessary infrastructure can be delivered in a timely way.

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.*

Response:

Disagree.

The Infrastructure Delivery Strategy and strategic spending plan will be highly dependent upon cooperation and transparency between different tiers of authorities when putting together evidence about the infrastructure needs, the costs and delivery mechanisms. This does not always happen at present. To ensure that there is cooperation and transparency, there must be mechanisms in place to ensure that the infrastructure providers are responsible for providing evidence to support the infrastructure requirements and costs and that the detail behind the evidence/costs is transparent.

The scope of the evidence, costs and delivery mechanisms required should be clearly set out within guidance to ensure clarity and prevent disagreement between different tiers of authorities, landowners and developers. It is important that the strategy is flexible and focuses on strategic infrastructure structure rather than detail and specific solutions. However, flexibility may be at odds with transparency and the need to evidence infrastructure costs.

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

Response:

There would need to be significant input from infrastructure providers. They would need to provide clear, evidenced, justified and defensible rationale for the infrastructure identified and indicative costs. Evidence would need to differentiate between needs generated by specific developments, incremental development and current deficits in provision. Indicative costs for infrastructure would also be required.

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.*

Response:

Yes.

The views of the local community will be important in identifying existing issues and setting out the priorities for delivery.

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

Response:

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

Response:

All of the above.

It is essential that guidance ensures evidence supplied by a county council is robust, justified and related to planned development within the local plan.

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.*

Response:

Disagree.

Subject to the active input from infrastructure providers it will be possible to identify some of the larger scale infrastructure requirements. However, the amount of work and the costs required to identify all infrastructure requirements at this stage will be excessive, particularly if a local plan includes many small, dispersed sites. It should also be noted that the need for some infrastructure fluctuates over time.

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.*

Response:

Disagree.

The Levy and 'right to require' will remove the risk of negotiation and reduction of affordable housing contributions at planning application stage. However, it is likely to generate increased objection and challenge on viability grounds from developers and landowners at plan making/Levy setting stage. Efforts will therefore be redirected to negotiating affordable housing contributions down at this stage.

When setting a CIL rate, a 30-50% viability buffer is included within the calculations. Whereas, when considering the viability of S106 contributions through viability assessments at application stage, such a buffer is not used. If a buffer similar to that used for CIL is expected to be used when calculating the Levy, there is a risk that the amount of overall contributions will be reduced.

Using existing affordable housing contributions as a starting point will not support delivery as these are currently subject to negotiation and are likely to set out a lower rate than could be viability 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*

Response:

Agree.

As affordable housing will be provided on site, a contribution for this element of the Levy will not be required.

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

Response:

The district as elsewhere in the country is experiencing viability assessments on all schemes. It is rare we secure the full complement of the affordable housing provision in accordance with policy but when we do this leaves very little available for other infrastructure. As a rule when education is accounted for in terms of primary and secondary places and some limited offsite financial contribution towards open space that's the only infrastructure provided for.

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.*

Response:

No.

The right to require threshold should be set locally based on the infrastructure and affordable housing needs in the area.

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

Response:

Yes.

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*

Response:

D) Other.

The Neighbourhood Share should not be determined by using an arbitrary percentage as is the case with CIL. The amount of the Neighbourhood Share should reflect the type and amount of infrastructure necessary to support development in the parish or forum area, contributions to address the cumulative impact of development on infrastructure and infrastructure needs identified within a Neighbourhood Plan.

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 such areas?*

Response:

N/A

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.*

Response:

D) Other.

The portion should be higher than the current amount under CIL to reflect the actual costs incurred in implementing and delivering the system. This is likely to require a higher proportion as the system is being implemented, for example costs associated with the purchase of new software, recruitment and additional staff costs, training to operate the system and changes to financing and reporting systems. Local authorities will also incur additional costs in procuring independent valuation expertise to administer the system.

Additional funding should be made available to ensure that the costs associated with setting up and administering the Levy do not result in a reduced amount of the contributions being used for infrastructure and to ensure other services are not affected by the additional costs incurred.

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/Disagree/Strongly Disagree]

Agree as these do not usually exceed the threshold.

- self-build housing; [Strongly Agree/Agree/Disagree/Strongly Disagree]

Response:

Disagree

Housing of all build types have an impact on demand for infrastructure, services and facilities. The impacts on infrastructure arising from multi-plot or large-scale self-build scheme will not differ from the impacts arising from a scheme implemented by a national or small-scale housing developer. The Levy on other types of delivery mechanism will need to subsidise self-build housing, increasing the burden.

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?

N/A

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.

Response:

Yes.

There are no specific circumstances which would apply on a national basis, however there would be merit in local authorities being able to set out exemptions to reflect local circumstances and priorities.

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.

Response:

Disagree.

Small sites have a cumulative impact on infrastructure, it is therefore essential that they do contribute. It is recognised that smaller sites, especially those developed by SMEs do not generate the economies of scale the larger sites. However, some rural sites where values are high can generate significant increases in land value. It should not therefore be assumed that all small sites face the same viability issues and that rates should be lower.

As small sites deliver most homes in rural areas, the ability to require affordable housing should be extended beyond designated rural areas to enable local rural needs to be met. This will enable local authorities to determine their own priorities for delivering infrastructure and affordable housing in rural areas.

Small sites in sustainable locations, such as town and city centres, may be the most appropriate location for the delivery of affordable homes. Local authorities should therefore be able to determine their own priorities for such sites. Provided that the overall Levy reflects costs and viability, local authorities should be able to determine whether in-kind affordable housing or other infrastructure is most appropriate.

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.

Response:

As the Levy can be set at differing rates for differing sizes of development, typologies and locations, there should be minimal risk to SMEs.

Small sites are generally more appropriate in rural areas, especially areas such as AONBs due to landscape, settlement character, biodiversity and infrastructure issues. As small sites provide a large proportion of new homes in rural areas, it is important to ensure that affordable homes can be delivered where they are needed. Local authorities should be able to determine their own priorities for the delivery of affordable homes and/or other infrastructure on such sites.

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

Response:

Yes.

Buildings for community and some charitable uses.

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.

Response:

Unsure.

The principles referred to may be sufficient, however, this will depend upon the detail which remains to be provided in regulations. Delaying payment to post completion, could enable unscrupulous companies or individuals to avoid payment by dissolving companies or declaring bankruptcy. There is also potential for issues to arise when seeking to enforce payment where companies or individuals are registered overseas, particularly in countries where ownerships can be hidden.

The principle and benefits for a developer in delaying payment until after completion are understood. However, this does present potential enforcement issues. Payment through a series of instalments should be the default position to ensure that there are no incentives to take measures to avoid payment at the end of a project.

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

Response:

Yes.

However, a long implementation period is likely to create uncertainty within the development industry which may affect decisions to proceed with developments.

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.

Response:

No.