

Notice of Non-key Executive Decision

Subject Heading:	Response to Technical consultation on the Infrastructure Levy
Decision Maker:	Councillor Graham Williamson
Cabinet Member:	Graham Williamson, Cabinet Member for Development and Regeneration
SLT Lead:	Neil Stubbings, Director of Regeneration Programme Delivery
Report Author and contact details:	Ben Dixon – Infrastructure Planning Team Leader ben.dixon@havering.gov.uk
Policy context:	Places Theme – Development is managed in a way that protects the borough’s character Resources Theme – The Council is financially resilient and provides value for money services to residents
Financial summary:	Although there are no financial implications or risks arising from the preparation of a consultation response itself, the proposals being consulted on would impact on the Council’s revenue from developer contributions (CIL & S106) to fund the delivery of infrastructure and possibly borrowing costs.
Relevant OSC:	Places
Is this decision exempt from being called-in?	Yes

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The subject matter of this report deals with the following Council Objectives

People - Things that matter for residents

Place - A great place to live, work and enjoy

Resources - A well run Council that delivers for People and Place.

Part A – Report seeking decision

DETAIL OF THE DECISION REQUESTED AND RECOMMENDED ACTION

- 1.1 As part of the Government's Levelling Up and Regeneration Bill (LURB), which is currently going through the House of Lords, it is planned to provide the mechanism to introduce a new framework to replace the current system of developer contributions (S106 & CIL) with a new Infrastructure Levy (IL).
- 1.2 The Government's stated aim is: to ensure that local authorities receive a fairer contribution of the money that typically accrues to landowners and developers, to support funding for the infrastructure and affordable housing that local communities expect to come with new development.
- 1.3 Following the passing of the LURB, the detailed design of the proposed new IL process will need to be delivered through the adoption of new regulations. The Government is currently consulting on the technical design of these new regulations.
- 1.4 The proposed IL would be charged on the value of the development at completion per square metre and applied above a minimum threshold, as opposed to the current CIL process where CIL is charged at the time a development commences based on the floor area of the development. Levy rates and minimum thresholds would be set and collected locally, which is similar to current CIL process.
- 1.5 The Government consider the proposed IL process will allow developers to price the value of contributions into the value of the land and allow Levy liabilities to reflect market conditions.
- 1.6 The LURB requires local authorities to prepare Infrastructure Delivery Strategies, which will be an enhanced version of the Infrastructure Delivery Plan. These documents will set out a strategy for delivering local infrastructure and spending Levy proceeds.
- 1.7 The Government has stated it is committed to the Levy securing at least as much affordable housing as developer contributions do now. Local authorities will be able to set out what proportion of the Levy they want delivered as affordable homes and what proportion they want delivered as cash.
- 1.8 Full details of the proposals are set out in the Government's consultation page: <https://www.gov.uk/government/consultations/technical-consultation-on-the-infrastructure-levy/technical-consultation-on-the-infrastructure-levy>
- 1.9 The consultation opened on 17th March 2023 and will close on 9th June 2023. The consultation response takes the form of 45 questions, covering all the proposed changes.
- 1.10 This Executive Decision sets out a proposed response to the consultation comprising (Appendix A) with individual answers to the consultation questions.

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Recommendation

1.11 This report recommends the proposals set out in the technical consultation on the proposed Infrastructure Levy are noted and that the proposed consultation response set out in Appendix A is approved for submission to DLUHC.

AUTHORITY UNDER WHICH DECISION IS MADE

Authority for this decision is contained within Part 3, Section 2.5 of the Constitution which delegates the following responsibility to individual Cabinet members

- b) Where there are implications for policies of the Council, to agree members of staff's responses to consultation papers from:
- (i) the Government (including White and Green papers)

STATEMENT OF THE REASONS FOR THE DECISION

To provide the Council's response to the Government's consultation on proposed Infrastructure Levy.

OTHER OPTIONS CONSIDERED AND REJECTED

The option of not responding to the consultation was considered and rejected. It is important that the interests of Havering's residents and businesses are represented at national level when changes to the infrastructure planning system are being considered.

PRE-DECISION CONSULTATION

None

NAME AND JOB TITLE OF STAFF MEMBER ADVISING THE DECISION-MAKER

Name: Ben Dixon MRTPI

Designation: Infrastructure Planning Team Leader

Signature:

Date:

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Part B - Assessment of implications and risks

LEGAL IMPLICATIONS AND RISKS

The Department for Levelling Up, Housing and Communities (DLUHC) is consulting on introduction of a proposed new Infrastructure Levy to replace the current system of developer contributions (S106 & CIL). There are no legal implications or risks arising from the preparation of a consultation response to the consultation.

The introduction of the new Infrastructure Levy as currently proposed would have the following legal implications:

- It would change the way in which legal agreements are used to secure delivery of infrastructure – planning legal staff will need appropriate training and associated processes will need adapting.
- Removal of land charges records for IL liability after the initial payment is made but prior to the final adjustment payment being calculated or paid will potentially increase the risk of developers failing to pay their full levy liability with potentially complicated legal challenges required to secure outstanding levy payments.

FINANCIAL IMPLICATIONS AND RISKS

Although no financial implications or risks arise from the preparation of a consultation response, the introduction of the new Infrastructure Levy as currently proposed would have the following financial implications to which the Council's response sets out clear concerns:

- IL would replace both CIL and S106 contributions as the sole source of developer contributions towards funding infrastructure.
- The IL will be calculated based on the Gross Development Value (GDV) and will be payable on completion of the development rather than on commencement, as per the current CIL process. Therefore, developer contributions toward funding infrastructure will be made later than they are currently and this will have implications for funding the timely delivery of infrastructure to align with the demand from new development.
- If there is a positive economic climate and the GDV of a development is higher than predicted then developers will be required to pay a larger levy liability – meaning the Council should in theory receive a larger payment from developers.
- If there is an economic downturn and the GDV of a development is lower than predicted then developers will be required to pay a smaller levy liability – this could result in the Council having to re-pay money (received from the provisional levy payment) back to the developer.
- The Council will be allowed and is being encouraged to borrow against forecast IL receipts to plug infrastructure funding gaps and to bring forward funding of infrastructure – providing more financial freedom for the Council if it wishes to

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borrow, but at the same time creating significant new potential financial risks for the Council. These risks are amplified by the requirement to reduce levy liability for developers, make repayments to them if there is an economic downturn on top of which the repayment of the debt and/or any interest will still be required.

HUMAN RESOURCES IMPLICATIONS AND RISKS (AND ACCOMMODATION IMPLICATIONS WHERE RELEVANT)

There are no direct HR implications in respect of responding to the consultation.

Should the Infrastructure Levy be implemented as currently proposed, there may be future needs to assess existing staff resource and structures.

EQUALITIES AND SOCIAL INCLUSION IMPLICATIONS AND RISKS

The Public Sector Equality Duty (PSED) under section 149 of the Equality Act 2010 requires the Council, when exercising its functions, to have due regard to:

1. The need to eliminate discrimination, harassment, victimisation and any other conduct that is prohibited by or under the Equality Act 2010;
2. The need to advance equality of opportunity between persons who share protected characteristics and those who do not, and;
3. Foster good relations between those who have protected characteristics and those who do not.

Note: 'Protected characteristics' are age, disability, gender reassignment, marriage and civil partnerships, pregnancy and maternity, race, religion or belief, sex/gender, sexual orientation.

The Council is committed to all of the above in the provision, procurement and commissioning of its services, and the employment of its workforce. In addition, the Council is also committed to improving the quality of life and wellbeing for all Havering residents in respect of socio-economics and health determinants.

An Equalities Assessment is not considered necessary as there are no equalities and social inclusion implications arising directly from the Council's response to the Government's consultation on changes to planning fees, resourcing and performance.

The proposals within the consultation document do have potential implications for equalities and social inclusion and an appropriate response has been included in the Council's comments (see Appendix A). The response advises:

'Due to the requirement for later payment of the levy, compared to CIL, and the potential delay this could cause with respect to the funding of the delivery of infrastructure – the proposal could have a potential negative impact on children if delivery of education facilities are delayed and particularly children/elderly people, people with disabilities and pregnant mothers if delivery of healthcare facilities are delayed.'

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ENVIRONMENTAL AND CLIMATE CHANGE IMPLICATIONS AND RISKS

There are no environmental or climate change impacts from this decision.

The introduction of the new Infrastructure Levy as currently proposed would have implications:

The proposed levy process will remove the current ability in London to collect S106 carbon offset contributions. This is a really valuable incentive to developers to push towards delivering zero carbon buildings and allows financial payment to the Council to help fund mitigation where this does not happen. The proposals do not include any incentive to continue to push developers towards maximising sustainable and zero carbon buildings. Building Regulations are a good way off where they need to be to deliver the sustainable and zero carbon buildings we need to deliver to meet the challenges of the climate emergency.

BACKGROUND PAPERS

None

APPENDICIES

Appendix A London Borough of Havering response to the consultation questions.

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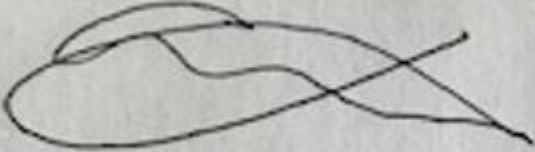
Part C – Record of decision

I have made this executive decision in accordance with authority delegated to me by the Leader of the Council and in compliance with the requirements of the Constitution.

Decision

Proposal agreed

Details of decision maker

Signed: 

Name: **Councillor Graham Williamson**

Cabinet Portfolio held: Development and Regeneration
CMT Member title:
Head of Service title
Other manager title:

Date: 31/05/23

Lodging this notice

The signed decision notice must be delivered to Democratic Services, in the Town Hall.

For use by Committee Administration

This notice was lodged with me on _____

Signed _____

APPENDIX A

Answers to Consultation Questions

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**

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

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 explain your answer, using case study examples if possible.

A combination of the options set out at para 1.28. It would seem likely the distinction between the 2 types of infrastructure would in many cases require negotiation and agreement between the developer and the local authority. What would be the time limits for these negotiations to take place? How would disagreements be resolved?

It is noted that it is only proposed to make developments meet Building Regs in terms of carbon reduction and not Zero Carbon as the London Plan currently promotes through S106 carbon offset payments. This would be moving in an unnecessary backwards direction in terms of reducing climate crises impact.

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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 – but only a small percentage of the levy receipt (maybe a maximum of 25% including the neighbourhood portion as per the current CIL regime). The majority of the levy receipt should be ring fenced to fund infrastructure and affordable housing. This would prevent the levy being used by Councils, that are in financial difficulties, to plug systemic funding gaps in revenue funding, rather than delivering the required physical infrastructure and affordable housing needed to support 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 very strongly agree.

Should expectations be set through regulations or policy? Please provide a free text response to explain your answer where necessary.

Yes.

The majority of the levy receipt should be ring fenced by regulations or policy to prevent the levy being used by Councils to plug systemic funding gaps rather than delivering the required physical infrastructure and affordable housing needed to support development.

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

Financial support to local businesses (e.g. new shops) or community groups to become established in regeneration areas in advance of population being established through development making areas more attractive to new residents to early phases of a scheme.

Question 7: Do you have a favoured approach for setting the 'infrastructure in-kind' threshold? Please explain your answer, using case study examples if possible.

Low threshold or local authority discretion is the preferred option as it would provide the desired flexibility for our authority which has many regeneration brownfield sites of 500 – 5000 units in our two Housing Zones, which will often require provision of 'infrastructure in kind' such as schools and healthcare facilities. We have concerns that the proposed high threshold would not provide the flexibility we feel we need to be able to secure the required

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'infrastructure in kind'. We do not have significant concerns about the requirement to negotiate s106 agreements and find the current S106 system generally works fine for us in terms of being able to negotiate the required provision of on-site infrastructure when appropriate.

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?

Unsure.

Question 9: Do you agree that the Levy should capture value uplift associated with permitted development rights that create new dwellings?

Yes. Developers of schemes permitted under the prior approval regime usually make a good profit on these schemes and the creation of the new dwellings creates increased demand on local infrastructure. Therefore, these schemes should pay their fair share of the levy to support funding the infrastructure required to meet the increased demand they generate in the local area.

Are there some types of permitted development where no Levy should be charged?

No, unless they fall outside of the existing CIL definition of 'development'.

Question 10: Do you have views on the proposal to bring schemes brought forward through permitted development rights within scope of the Levy?

Yes, we support this proposal. Schemes brought forward through permitted development should be treated the same as developments with planning permission and should be charged the maximum viable rate of Levy.

Do you have views on an appropriate value threshold for qualifying permitted development?

This needs to be carefully reviewed and viability tested.

Do you have views on an appropriate Levy rate 'ceiling' for such sites, and how that might be decided?

This needs to be carefully reviewed and viability tested.

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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? Please explain your answer where necessary, using case studies if possible.

Unsure as don't believe this is an issue in our area.

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?

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

- Charging the Levy on final sale GDV of a scheme

Strongly Disagree that this will result in collecting more than the existing system. Not convinced the amount that could potentially be collected using final sale GDV will, even in the best case scenario, result in collecting significantly more than the existing system of CIL and viability tested S106 in our area. The proposed use of final sale GDV will be much more complex and technical to administer in reality and will likely result in better equipped and/or more unscrupulous developers being able to game the system and deceive local authorities using a variety of tricks (such as selling properties at artificially low prices to a third party re-seller – possibly another company owned by the developer; using an off-shore shell company with no assets as the vehicle to deliver the development and then winding up the company prior to full payment of the levy etc).

Use of final sale GDV will also bring significantly more complexity into the assessment of smaller developments that would just currently pay CIL based on floorspace and no S106, so currently do not require any kind of viability assessment and associated access to specialist viability/surveying skills. Skills which are costly and in short supply – we have to hire in external expertise to viability assess all major applications. This would need to be expanded to assess many smaller levy paying developments.

- The use of different Levy rates and minimum thresholds on different development uses and typologies

Strongly Disagree – this will not make any improvement over the current system where CIL can be charged at variable rates for different developments and in different geographical areas

- Ability for local authorities to set 'stepped' Levy rates

Strongly Disagree – the stepped rates would be set at a point in time so the step changes they deliver are not based on economic changes which have occurred after the initial rate is set.

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- Separate Levy rates for thresholds for existing floorspace that is subject to change of use, and floorspace that is demolished and replaced

Strongly Disagree – this will not make any improvement over the current system where CIL provides relevant relief for existing floorspace and demolition.

Question 14: Do you agree that the process outlined in Table 3 is an effective way of calculating and paying the levy?

No.

How is the development valuation skills gap within local authorities going to be bridged? Who is going to pay for the valuation assessment if external consultants are required for assessment of every IL liable development? If developers are expected to pay (like the current system), what will be the mechanism for securing their payment if S106 is removed?

The local authority may have to return money to the developer (paid at the 'provisional liability' stage) if the development sells badly, meaning the Council is at risk of spending any money received prior to sale and the final development valuation – a sensible risk averse approach from local authorities as a result of this would delay funding and delivery of infrastructure. What happens if local authorities have borrowed against the higher value (as it is suggested they should do) and then the final value of the scheme is decreased and how does this risk manifest at scale with large sites?

Delaying payment of infrastructure funding to local authorities and telling them to just borrow against forecast IL liabilities is de-risking for developers and piling all that risk onto local authorities. How is that an improvement apart from for developers who can reduce their borrowing costs?

Question 15: Is there an alternative payment mechanism that would be more suitable for the Infrastructure Levy?

Yes – payment on commencement of development as per the current CIL regime.

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?

No.

If this proposal was adopted, the removal of the local land charge should not occur when the provisional Levy liability is paid, but instead remain attached until the final adjustment payment is made. Without this we would see a not

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insignificant number of the more unscrupulous developers utilising loopholes to sell the properties and not pay the full levy amount (e.g. where developers are ghost off-shore shell companies without any assets which can be easily wound up making the developers untraceable in a spiders web of offshore entities). Also surcharges and penalties are never significant enough to act as a stick to prevent bad behaviour from developers.

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 Disagree.

If this proposal was adopted, the removal of the local land charge should not occur when the provisional Levy liability is paid, but instead remain attached until the final adjustment payment is made. Without this we would see a not insignificant number of the more unscrupulous developers utilising loopholes to sell the properties and not pay the full levy amount (e.g. where developers are ghost off-shore shell companies without any assets which can be easily wound up making the developers untraceable in a spiders web of offshore entities). Also surcharges and penalties are never significant enough to act as a stick to prevent bad behaviour from developers.

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. The whole of the levy should be payable on commencement of the development as per the current CIL regime for all IL liable developments.

It is far better for local authorities to receive a little less money upfront when development is commencing, rather than a little more money after development has been completed - when it is too late to fund timely delivery of the infrastructure required to support the new occupants of the development (residents, workers learners, visitors) and manage the impact of the development to make it acceptable in planning terms.

Being responsive to market conditions, in the hope of securing some extra funding, is less important for the funding and delivery of infrastructure than actual receipt of infrastructure funding at the same time as development commences, which allows infrastructure to be delivered in a parallel coordinated way with the development and to come online in time to meet the new demand from the development.

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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?

The whole of the levy should be payable on commencement of the development as per the current CIL regime for all IL liable developments.

It is far better for local authorities to receive a little less money upfront when development is commencing, rather than a little more money after development has been completed - when it is too late to fund timely delivery of the infrastructure required to support the new occupants of the development (residents, workers learners, visitors) and manage the impact of the development to make it acceptable in planning terms.

Being responsive to market conditions, in the hope of securing some extra funding, is less important for the funding and delivery of infrastructure than actual receipt of infrastructure funding at the same time as development commences, which allows infrastructure to be delivered in a parallel coordinated way with the development and to come online in time to meet the new demand from the development.

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

Unsure.

Agree that the proposed role for valuations of GDV is necessary in the IL model being put forward. However, it is considered that the 'stages' set out at para 3.16 fail to take account of the likely expectation from developers to want local authorities to agree the detailed inputs for the 'Indicative liability' calculation at the pre-app stage (to provide them a level of 'certainty') which will require another 'stage' of valuation assessment. It is current normal practice on major developments to review detailed viability inputs at pre-app stage with S106 heads of terms currently negotiated at this stage. Why would developers not expect this to continue?

Disagree that the role of valuations of GDV as set out is proportionate other than on large major and strategic schemes. This will prove overly onerous for developers and local authorities on smaller schemes which would currently be liable to pay CIL and which should continue to be required to make contributions towards funding the delivery of infrastructure.

Unsure of the need to get rid of the current CIL/S106 regime and replace it with the proposed IL and the actual benefits this will deliver versus the disruption and added complications associated with the implementation and operation of the proposed IL.

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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 Disagree

Speculatively borrowing against an unknown final IL receipt, which could go down rather than up if a development performs more poorly than expected in terms of increased costs and reduced sales values, is surely a risky course of action for local authorities that are set up to be risk averse? What happens in a scenario where a large amount of money is borrowed to fund a large infrastructure item against large forecast IL receipt from one or more large developments which then stall or fail due to unforeseen economic or other factors? The local authority may then need to use all or most IL receipts from other developments just to service the debt repayments meaning no other infrastructure can be delivered funded by IL or borrowing against forecast receipts.

Payment of the levy to the local authority early enough, so that it can programme the spend and project plan the delivery of the required infrastructure ready in time to meet the new demand when developments are occupied, is the only real way to actually ensure that levy proceeds will be sufficient to ensure the timely delivery of infrastructure, without unnecessarily burdening local authorities with excess risk.

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.

This mechanism would retain the current ability of local authorities to secure upfront infrastructure funding payments as they currently can do with s106 agreements. This would be critical to allowing local authorities to secure the required funding to deliver key infrastructure, in a timely fashion, so that the infrastructure is delivered ready to meet the new demand when the development paying the levy is occupied.

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?

Unsure.

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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?

Agree.

It appears the proposed strategic spending plan together with a replacement IFS would comprise an appropriate mechanism which should provide transparency and a relative degree of certainty on how the levy would be spent. Potential issues could arise associated with a change of administration with different views on the prioritisation of levy spend, changes in other related legislation / regional policy, changes in sources of funding for infrastructure (e.g. DfE funding for new schools, NHS funding for healthcare facilities etc) and changes in economic circumstances, which may cause actual spend of the levy to deviate from that set out in the strategic spending plan.

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

Detailed evidence of the existing infrastructure baseline will be required across all forms of infrastructure including: affordable housing, supported housing, healthcare, education, transport (including active travel, EV charging, public transport), leisure and exercise, public open space, green/blue/nature infrastructure, flood defences, public safety (blue light services, cctv etc), utilities (including fibre), energy centres and networks, waste collection/process/storage.

An assessment of the existing infrastructure provision gap between the existing need and current baseline (where this is relevant - caused due to historic underfunding of infrastructure provision and failure to secure joined up planning and management of infrastructure delivery).

Detailed evidence of the projected increased need across all forms of infrastructure (as set out above) as a result of planned development (based on detailed projected demographic change) in the local authority area and neighbouring authority areas. This will need to set out the increased need arising from individual large strategic developments as well as the cumulative impact of all development.

All of the above mentioned information will need to be appropriately spatially mapped (GIS) across the local authority area and across the boundaries with neighbouring authorities. This will provide clear visual representation of the spatial distribution of existing infrastructure, existing infrastructure provisions gaps, and increased need for infrastructure delivery based on planned development.

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Question 26: Do you agree that views of the local community should be integrated into the drafting of an Infrastructure Delivery Strategy?

Yes

There should be public consultation to understand the views of local people and these should be taken into account, however, ultimately the local authority should decide the priorities for spend of the levy based on an approach chiefly led by detailed evidence of existing and projected need.

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 - Yes

The proportion of the levy that a local authority can spend on non-infrastructure items should be capped (potentially at 25% including the neighbourhood share) to ensure that the majority of the levy is ring-fenced to fund delivery of infrastructure. This will prevent local authorities that are experiencing financial difficulties funding services (e.g. social care) from utilising the levy to plug revenue funding gaps at the expense of delivering the infrastructure required to support development.

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

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- Implementation of statutory timescales for infrastructure providers to respond to local authority requests

All of the above.

Question 29: To what extent do you agree that it is possible to identify infrastructure requirements at the local plan stage?

Neutral

It should be possible to identify most large scale strategic infrastructure requirements at the local plan stage. However, it is likely that some infrastructure requirements which fall outside of integral infrastructure and which would be 'levy funded' would not be identified at the local plan stage. These would likely be picked up at planning pre-application stage.

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?

Neutral.

Agree that technically the proposed 'right to require' will reduce the risk that the amount of affordable housing contributions as a proportion of the levy collected could be negotiated down on viability grounds on large developments. However, there remains concern that if it is possible in any way for developers to game the system in terms of inputs into the GDV (build costs, sales values) they will find a way and this would lead to a reduction in the levy secured and an associated failure to maximise delivery of on-site affordable housing.

For smaller major schemes with a smaller GDV, that would only support a small value of in-kind affordable housing provision, which would be unlikely to be attractive to / practically deliverable by registered providers, these schemes would need to pay all the money that would be covered by the 'right to require' as cash and this money should be ring-fenced to fund delivery of affordable housing by the local authority on other sites, unless they was clear justification to do otherwise i.e. the need to fund other infrastructure related to the development paying the levy.

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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?

Agree

It is certainly necessary to support high percentage/100% affordable housing schemes with appropriately discounted levy rates. However, this issue does need to be carefully considered. If several of these large schemes are delivered in close proximity they will create demand for increased healthcare and education provision as well as increased pressure on transport networks. How will provision of these additional 'levy-funded' type infrastructure, required to meet the demands of the high percentage/100% affordable housing schemes, be funded? Could there be Government infrastructure funding grants made available for local authorities to bid on in these specific circumstances?

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

On average registered provider-led schemes probably do not fund delivery of as much infrastructure as they pay significantly less CIL. However, these schemes often still include sufficient market housing to deliver a profit which on viability assessment allows for payment of not insignificant amounts of S106 contributions towards improvement in the surrounding area for public transport, active travel, play space, public realm etc

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?

No.

Alternatively, do you think where the 'right to require' is set should be left to the discretion of the local authority?

Yes.

There will be many and varied circumstances across the country in terms of local affordable housing need vs infrastructure need. Local authorities will be best placed to make the call on where to set their 'right to require' level provided they have evidence to back up their decision.

Question 34: Are you content that the Neighbourhood Share should be retained under the Infrastructure Levy?

Yes

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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.

The Neighbourhood share should be either the same or less than it currently is under the CIL regime. The same would seem fine. Any increase would risk underfunding the delivery of key strategic infrastructure.

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?

Business Improvement Districts (BIDs).

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.

The administrative portion should be at least 5%. We currently allocate the full 5% CIL admin fee and charge an additional 5% of the value of each s106 contribution as a monitoring fee. This does not cover the full costs of administering CIL and S106 obligations which include staff in both Planning and Finance, software for reporting/monitoring CIL/S106. It is envisaged the costs to the local authority of administering the levy once established would be generally the same (not including any costs for assessment of GDV inputs which would either be an additional cost to the local authority or preferably charged to the developer).

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:

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

- residential annexes and extensions;

Strongly Agree – retain the existing CIL criteria in relation to size of the development.

Non-key Executive Decision

- self-build housing;

Disagree – self-build housing should be treated the same as all other market housing as it is not affordable housing and creates the same level increased infrastructure demand as any other market housing.

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.

The proposed levy process will remove the current ability in London to collect S106 carbon offset contributions. This is a really valuable incentive to developers to push towards delivering zero carbon buildings and allows financial payment to help fund mitigation where this does not happen. There needs to be some form of incentive included in the levy process to push developers towards maximising sustainable and zero carbon buildings. Building Regulations are a good way off where they need to be to deliver the sustainable and zero carbon buildings we need to deliver to meet the challenges of the climate emergency. Therefore, reliance on Building Regulations will not work unless their baseline requirements are significantly increased.

Question 40: To what extent do you agree with our proposed approach to small sites?

Neutral.

Agree that in some circumstances it is appropriate to reduce the levy secured on small sites and accept the current position in terms of small site not having to provide affordable housing is correct in some circumstances to support SME developers. However, it needs to be recognised that in some urban areas (not in the countryside) there will be a cumulative impact on infrastructure demand from many small sites, so this needs to be carefully considered when setting the reduced levy rate for small sites in order not to underfund required infrastructure provision.

The current position with a small site threshold below 10 units does have the perverse consequence of delivering many 9 unit developments with no affordable housing (on-site or contribution) on sites which would have naturally delivered 10 to 12 residential units. Further consideration of this should be made. How many less units has this delivered over the last 20 years?

There also needs to be a mechanism in place in the levy regulations to prevent developers from artificially subdividing larger sites into smaller sites in order to pay a reduced levy rate.

Non-key Executive Decision

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.

At present SME developers delivering schemes under 10 units would just pay a fixed CIL rate which does not incur large amounts of additional cost to calculate with no viability assessment etc. With the introduction of the levy all small developments of 1 to 9 residential units would need to engage in negotiations with the local authority about the GDV and its component inputs (build costs and forecast/actual sales values) at each of the stages. They will need to fund their assessment by the local authority's appointed independent assessor (assuming most authorities will not have the required in-house skills to assess this – as they currently do not). This would increase costs and complexities for SMEs and could risk slowing down their planning applications at both validation and processing stages.

Maybe a simplified process such as the current CIL process (based on floorspace?) could be employed for small sites to reduce the complexity and costs of engaging with the levy for these developers?

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

Unsure.

Question 43: Do you agree that these enforcement mechanisms will be sufficient to secure Levy payments?

Disagree.

Removal of the local land charge on payment of the provisional levy liability will cause problems for local authorities who need to enforce against non-payment at the final adjustment stage. Removal of the local land charge should not occur when the provisional Levy liability is paid, but instead remain attached until the final adjustment payment is made. Without this we would see a not insignificant number of the more unscrupulous developers utilising loopholes to sell the properties and not pay the full levy amount (e.g. where developers are ghost off-shore shell companies without any assets which can be easily wound up making the developers untraceable in a spiders web of offshore entities).

Also experience suggests surcharges and penalties are currently not significant enough to act as a stick to prevent bad behaviour from developers. Penalties will need to be significantly increased if they are to have the desired effect.

Non-key Executive Decision

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?

Agree

The proposed changes are significant and complex. Experience of developing CIL and S106 regulations and policy over many years illustrates how real-world scenario testing is the best way to iteratively design and refine this type of regulation / policy.

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?

Due to the requirement for later payment of the levy, compared to CIL, and the potential delay this could cause with respect to the funding of the delivery of infrastructure – the proposal could have a potential negative impact on children if delivery of education facilities are delayed and particularly children/elderly people, people with disabilities and pregnant mothers if delivery of healthcare facilities are delayed.