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June 2023

Technical consultation on the Infrastructure Levy

Consultation response from The Housing Forum

Response submitted by:

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About The Housing Forum

The Housing Forum is the UK's cross-sector, industry-wide organisation that represents the entire housing supply chain. Our growing membership drawn from over 150 organisations across the public and private sectors and includes local authorities, housing associations, housebuilders, architects and manufacturers. All share our determination to drive quality in the design, construction and decarbonisation of UK homes. They have a commitment to partnership working and share in our vision of 'A Quality Home for All'.

In order to achieve this, we have advocate for policy change needed for everyone to live in a good quality, sustainable and affordable home. Our key [Housing Solutions](#) set out how we think this can be achieved.

Introduction

The Housing Forum welcomes the opportunity to respond to this consultation on the Infrastructure Levy on behalf of our cross-sector membership base.

We represent organisations from across the housing sector – including local authorities, housebuilders and social landlords. **We see very little enthusiasm for the levy from any of these groups**, which does raise a lot of concern.

We do appreciate the **intention to help local authorities to capture more of the land value uplift** associated with planning permission, in order to provide the infrastructure and Affordable Housing that is needed for a growing population.

The Government also **rightly identifies that there are problems with the current system** of funding infrastructure via S106 and the Community Infrastructure Levy (CIL). We and our members recognised these issues and all find the negotiation process involved with S106 to be time-consuming and often frustrating. Local authorities do not always feel they are getting as good a contribution to infrastructure or Affordable Housing as they would like, or as the market might potentially support. Developers, in contrast, are caught in a system where they need to bid competitively for land and need to be optimistic about profits in order to outbid others, creating a high risk of subsequent viability challenges. Big increases in construction costs in the last two years, have added further difficulties here.

Nevertheless, the overarching feeling across the housing sector is that **the current system does work**. Around half the Affordable Housing delivered in the country is via S106. We think there is more that could be done to tackle some of the problems in the current system incrementally – such as establishing why CIL is not yet in use in around half of local authorities, and better understanding (and potentially limiting) the circumstances when S106 commitments can be renegotiated on viability grounds. We note that the ongoing CMA investigation into the housebuilding industry is examining the negotiation and delivery of planning obligations, which may provide further ideas for incremental improvements to the current system.

We are also very concerned about the **degree of complexity** of the proposed infrastructure levy, and the timescales involved. For a new system such as this to move ahead, **cross-party support is essential** and does not appear to be present currently. The government has moved on with this complex technical consultation, which we have tried our best to contribute to. However, some of the questions are difficult to answer, when so much is still unclear.

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Response to questions

Chapter 1 – Fundamental design choices

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

- **developments of less than 100 square metres (unless this consists of one or more dwellings and does not meet the self-build criteria) –**
Unsure
- **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 -**
Unsure

At The Housing Forum, we are concerned about the transition from the existing regime, which is reasonably well understood (though only around half of local authorities as yet use CIL), so can see the value in using existing definitions.

However, it is the case that the infrastructure levy is more closely related to land value uplift than it is to the cost of onsite infrastructure, and there is therefore less reason to exclude certain types of development from it. It is also the case that some types of development currently excluded from the definition for CIL purposes also require infrastructure. We would therefore encourage the government to draw the definition as widely as possible and encourage local authorities to use different rates of infrastructure levy for different types of development.

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, though see below.

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].

It is clearly vital that much of the infrastructure are provided on site. However, the extent of what is required onsite will vary between one site and another. For instance, one development may include a new play area but a similar-sized one nearby may not, because there is already a nearby play area.

We would therefore suggest, that the definition of ‘integral’ infrastructure is drawn narrowly to include only provision that would always be required on site, even for small sites (such as street lighting or cycle parking).

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This will leave infrastructure that is required on site, but which varies from site to site, so cannot be excluded from the infrastructure levy contribution. Developers are often best placed to deliver much of the on-site provision, as they can coordinate the construction alongside other elements. We would also suggest that much of the levy-funded infrastructure is also delivered by the developer, with the costs of doing so deducted from the infrastructure levy that is paid in cash.

It is essential that clear guidance is provided as to what is included as 'integral' infrastructure with a detailed, though non-exhaustive lists of types of both integral and levy-funded infrastructure alongside the principles used to determine how anything not listed should be classed. The definitions should be provided in as much detail as possible by government and not determined by LPAs – LPAs are already stretched in terms of resources and it is much more efficient for definitions to be set centrally. It also creates a clearer operating environment for developers and housing associations if there is consistency between areas. Altering the rates of the levy is the better way of allowing for differences between local housing markets.

Guidance should also set out how local authorities determine whether any type of infrastructure not listed is integral or infrastructure levy-funded, including timescales and processes for resolving any disagreement.

New regulations for the levy should be kept up to date with the latest regulations around building regulations and zero carbon, including the requirements set out in the London Plan for S106 carbon offsetting payments.

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?

No. The intention is that the levy provides funding for infrastructure, and it cannot do this if it is syphoned off into revenue spending. Local authority budgets are under a lot of strain, so allowing the infrastructure levy to be spent on revenue items risks local authorities prioritising lower bills or increased public spending today at the expense of investing in the infrastructure needed for the future and to support the new development.

If any funding is permitted for non-infrastructure spending, the proportion of the levy that can be spent this way should be clearly set out and capped.

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. The Housing Forum agrees with this proposal, though the levy should not be used to pay for non-infrastructure. If a local authority is unable to spend the levy that they collect (for instance a tightly bounded London borough with little space for new affordable housing or infrastructure, but capable of generating high rates of infrastructure levy), then any unspent levy could be reallocated to provide affordable housing in nearby areas (possibly with an agreement over allocations for the authority providing the funding). Primary legislation should set the parameters out

clearly. We would also like confirmation of whether the infrastructure levy will come forward as a legal document, on the same basis as S106.

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

There may be a case for financial support to be provided for new local businesses or community groups as 'set up costs' to be considered as infrastructure spending – as they are capital setup costs, rather than ongoing costs. These can help make areas attractive to new residents and build strong communities.

We are not aware of any other non-infrastructure items that the levy should be spent on, but would support it being spent in neighbouring local authorities under certain circumstances where mutually agreed (such as for affordable housing, as outlined above).

Question 7: Do you have a favoured approach for setting the 'infrastructure in-kind' threshold?

We are unsure on this and would suggest that the test and learn pilots explore this issue. The potential benefits of the infrastructure levy are greatest if a high threshold is used, allowing local authorities to capture more of the increase in site values. However, there are more risks associated with this, especially as it involves a move away from S106 which is proven to deliver. The appropriate threshold also depends on the way in which integral infrastructure and levy-funded infrastructure is defined and whether mechanisms can be developed for onsite levy-funded infrastructure (needed on one site, but possibly not required on all sites – hence levy-funded) to be delivered by the developer.

We have concerns about using the number of homes to define sizes, as this could create perverse incentives to under-deliver new homes on sites near to a threshold.

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?

At The Housing Forum we and many of our members are concerned that retaining S106 alongside the infrastructure levy risks creating an overly complex system where the problems associated with S106 (protracted negotiations around viability) are retained, alongside new problems associated with the infrastructure levy. This creates a complex system as well as increased challenges for local authority resourcing. Increased standardisation and templates for LPAs to use could help address this latter issue.

Further details about Delivery Agreements would also be welcome.

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Chapter 2: Levy rates and minimum thresholds

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

Yes. We support this approach in principle – if the creation of new homes or another change of use creates land value uplift then this should be captured, in line with other new developments. The new homes create a requirement for new infrastructure, just as they do if built via other routes.

At The Housing Forum we believe in raising the quality of housing, as well as in increasing the delivery of much-needed affordable homes. We are concerned that the current approach to permitted developments of exempting them from S106 requirements mean they contribute nothing by way of affordable housing. This incentivises new housing to be developed via permitted development, even though that may not create the best quality of housing.

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

Yes. Householder permitted development rights should not fall within the levy as these do not usually have any impact on infrastructure requirements and bringing them within the levy would add costs and bureaucracy and discourage householders from improving their properties, including making them more energy efficient.

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

Yes. As outlined above, we think it is appropriate in principle for new homes created via permitted development to be in scope of the levy. However, the practicalities of setting thresholds are likely to be particularly challenging for this type of development. The existing use value is likely to vary considerably between sites, as will the costs of converting existing buildings to housing. We therefore cannot see how thresholds can be set centrally as they vary considerably between sites. The practical implementation of applying the infrastructure levy to permitted developments should be considered via the test and learn approach with other mechanisms of funding infrastructure considered instead involving a more negotiated approach considered instead if it proves impossible to set thresholds that work across very different sites.

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?

There are challenges to developing on brownfield sites, and in lower value areas there may be very little land value uplift capable of paying for the infrastructure required. Additional funding for infrastructure may be required.

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It will be very hard to create a system that generates certainty and also maximises the economic and affordable housing potential of brownfield sites, when they can vary so much. We would suggest a form of exceptional circumstances relief, similar to that available (but rarely used) under CIL.

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**

Unsure - We understand the government's ambitions of enabling local authorities to share in any uplift in the final sales values. However, we are concerned that GDV minus a threshold set at the start (intended to capture existing use value and construction costs) is not a reliable measure of land value uplift. This is because it does not take into account any unexpected change in construction costs – construction costs have experienced very high inflation lately, and changes to regulations on issues such as building safety can also create unexpected increases. This is a concern for many of our members at The Housing Forum. It increases risk for housebuilders, in what is inherently a high-risk business where both sales revenue and costs can change unpredictably. This applies both to private sector developers and housing associations developing housing for market sale to subsidise their Affordable Housing. What appears initially to be a reasonable proportion of estimated profits could easily wipe them out and more if the construction costs are not as anticipated.

It is also unclear how the levy would work on sites developed by local authorities or housing associations for 100% affordable housing, which are usually exempt from other S106 requirements at present.

The government should work with lenders and the insurance industry to ensure that there is provision for payment of the levy in situations where a housebuilder goes out of business before the levy is paid, whilst protecting the interests of other groups such as the purchasers of new housing.

It is also important that the government legislates carefully to prevent anyone gaming the system - for instance by selling properties for sub-market prices to an intermediary in order to artificially reduce the GDV.

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

Strongly agree - We think these are essential for the levy to maximise the amount it collects from straightforward sites without jeopardising the viability of sites that cost more to develop.

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

Unsure - Setting stepped rates seems a sensible way to introduce the levy cautiously while everyone gets used to assessing the risks involved, though clarity would be

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needed over future rates and also how phased developments are affected. We are unclear on how this would replace or overlap with the existing S106 and CIL regimes and concerned that if it does not, there is a risk of under-provision of infrastructure and/or affordable housing during the introductory period.

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

Agree - Demolishing housing before commencing a new build will have different costs associated with it compared with conversions. It is difficult to see how set thresholds can cover the range of costs associated with either of these where each site is likely to be quite specific.

Chapter 3 – Charging and paying the Levy

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

Unsure. We see concerns across the housing sector about the overarching mechanisms within the infrastructure levy. However, if it is brought forward, we agree that an upfront payment is useful alongside the final adjustment. The size of this payment needs to balance the cash flow pressures on both developers (who have yet to make any money from the site) and local authorities (who need to fund the infrastructure in advance of occupation).

Provision of an option to pay by instalments would help SMEs and housing associations in particular. Phased payments are also likely to be appropriate to larger sites where the housing is sold over a significant period of time.

We think that clarity will be needed over how the initial appraisal is undertaken, and also over what would happen if sales values are much lower than expected meaning that the initial payment was more than the total should have been. If local authorities are required to pay back the developers in this instance, this clearly adds to their risks and makes it hard to deliver the infrastructure with the money they receive up front.

We remain concerned that there is no mechanism at present to account for changes in the costs of development, adding significant risks.

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

Yes – we would support a system where the first payment is made on commencement of the development (as per the current CIL arrangements) and further payments with the bulk of payments being made as properties are sold and the cash flow is available.

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?

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Unsure. Our local authority members have expressed concern that removing the charge at this point in time does not protect them against any unscrupulous actors from failing to pay the full levy, as penalties can be harder to enforce or insufficient to ensure good behaviour. Developers, in contrast, are concerned that the charge would need to be removed before the homes are sold as it would otherwise inhibit the sale of homes.

Question 17: Will removal of the local land charge at the point the provisional Levy liability is paid prevent avoidance of Infrastructure Levy payments?

See previous answer.

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?

We would support this when it is mutually agreed by the developer and the local authority (for instance if the early payment is required to fund infrastructure which will improve sales rates or income)

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?

We would support this when it is mutually agreed by the developer and the local authority (for instance if the early payment is required to fund infrastructure which will improve sales rates or income)

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. We have concerns about the use of GDV as a basis for capturing land value uplift (as it takes no account of construction costs, see response to Q13), but if it is to be used then a consistent and clear basis for calculating it is essential. We are concerned that the GDV minus threshold approach does not account for any changes in construction costs.

Chapter 4 – Delivering infrastructure

Question 21: To what extent do you agree that the borrowing against Infrastructure Levy proceeds will be sufficient to ensure the timely delivery of infrastructure?

Neutral. Borrowing against future levy receipts may be necessary in order to bring infrastructure forward when it is needed, but also creates challenges and risks for local authorities, especially if there are delays to the sale of the housing, and hence to the levy being collected. Sites may experience substantial delays especially in times of a housing market downturn or where planning rules change part-way though (as has happened with the second staircase rules recently). Flexibility and strong collaborative working with the developer is needed here to avoid local authorities borrowing against future receipts to provide infrastructure that is in fact not needed for some time.

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The levy gives local authorities less certainty over the total available funding they will have for infrastructure – they may share in the upsides but will also run the risk of lower than anticipated returns. This creates difficulties if they are trying to borrow against a future income that is uncertain. Local authorities should have some degree of flexibility over how much infrastructure levy is spent on each site, so that they can use higher than expected receipts from one site to subsidise lower than expected from another. They should also be encouraged to prioritise essential infrastructure from discretionary provision.

The provision of infrastructure itself can also be hard to time if there are delays to either procurement or gaining planning consent.

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?

Neutral. We would suggest payments by instalment and encourage housebuilders and local authorities to agree timescales in a collaborative manner, for instance via a Delivery Agreement. We would caution that planning permission is often granted well before a development commences, often before the site has been acquired by the housebuilder who eventually builds it. Site owners may decide to make a fresh planning application for something different, for instance if market demand for different types of housing or other development had changed. Requiring payments too early would cause difficulties for the housebuilding sector.

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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. Local authorities and developers should work together to agree a site-specific infrastructure delivery plan which set out when infrastructure will be delivered and how this will be reviewed regularly against progress on site.

The government and wider stakeholders will still need to take the lead in bringing forward large-scale infrastructure projects, as well as providing funding for areas where the receipts of the infrastructure levy are insufficient.

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. The strategy should set out priorities and plans. It should recognise that the total amount of funding that will be available via the infrastructure levy will not be known until the final sales are complete, so should therefore set out how to deal with receipts that are higher or lower than anticipated. This may include prioritising essential and discretionary infrastructure.

We are concerned about the resourcing issues in LPAs and the degree of consultation that will be required to create an infrastructure plan and keep it up to date.

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

This should be identified by the local authority in line with their strategic development strategy. It should involve consultation with stakeholders such as NHS trusts, major employers and others who may require different types of infrastructure.

It would likely include:

- Evidence on the existing infrastructure relative to demands and gaps in provision
- A holistic review of all planned provision, including that planned in neighbouring areas
- Spatial mapping to provide clear visual information and help identify where exactly new infrastructure provision is required.

Our local authority members are able to identify a detailed list of what they would wish to include. However, our housebuilder members are sceptical that local authorities will have the resourcing to do this. It is essential that local authorities are given clear guidance on what they should do, what they do not need to do, and have the funding in order to do the things that are required.

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

Yes. We believe that the views of the existing community are important, and should be considered alongside an appraisal of the likely views and needs of the new residents who will live in the new housing. This may involve consultation with local employers or temporary housing providers, as well as the developer who will have undertaken market intelligence. The local authority should make final decisions reflecting on this consultation alongside its wider responsibilities and needs assessment, including its assessment of the need for affordable housing.

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**

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- **Other – please explain your answer**
- **All of the above**

We support all of the above. We would also add a consideration of the appropriate size mixture of affordable housing provision. Borrowing may be difficult to assess in detail in an overarching document, but the general approach should be set out, with more detailed plans outlined in site-specific infrastructure plans.

If any of the infrastructure levy is to be spent on non-infrastructure items then the strategy should set out what and why. We do not support the infrastructure levy being spent in this way (apart from a small allowance for setup costs for new communities) and would recommend this is minimised, but if it is to happen, then it should be justified and mapped out.

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**

We would support all of the above, though note that there may be issues with different strategies being out of date at any one time. The infrastructure strategy should be a high level document, that references other studies, rather than aims to replicate them. Guidance over where the infrastructure levy receipts should be spent (within the district, or within the wider county?) should be included.

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

We strongly agree that local plans should consider infrastructure requirements and try to identify them and prioritise as much as possible. However we have several concerns about whether it is possible to fully identify future infrastructure requirements at this stage.

Firstly, there is a lack of resourcing within local planning departments, and among wider statutory consultees, who are essential in helping determine what infrastructure is required. This is currently causing delays in determining CIL rates and S106 rates

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and would only be exacerbated by a new and complex new system such as the infrastructure levy. Tackling it requires a holistic approach to local authority skills and resourcing.

Secondly, the amount of funding that will be received from the levy cannot be known in advance. It is therefore not possible to make detailed plans for how it will all be spent. A degree of flexibility is therefore needed and identification over how shortfalls or higher than anticipated receipts will be dealt with. Local authorities should not be ending up in a position where essential infrastructure cannot be delivered because the levy receipts were lower than expected.

Local political control can change in a local authority. It is right that local elected politicians can have a say in the priorities for infrastructure. The needs of the population may also change (for instance via updated population projections meaning less than anticipated need for school places) or there may be changes to the funding available from other bodies such as the DfE or NHS. All these factors may necessitate an update to infrastructure requirements.

And finally, there may be factors associated with specific sites that come forward for development which require infrastructure not identified at local plan stage.

Chapter 5 – Delivering affordable housing

Question 30: To what extent do you agree that the ‘right to require’ will reduce the risk that affordable housing contributions are negotiated down on viability grounds?

Agree. At The Housing Forum, we believe strongly in the inclusion of Affordable Housing within new housing developments, and very much support the ‘right to require’ to ensure that this is prioritised as it needs to be in many areas.

We are aware that the government has indicated that it “expects” the infrastructure levy to deliver at least as much affordable housing as the present system, but are concerned that there is no identifiable mechanism by which this will happen. Over half of current affordable housing delivery is via S106 so there is a lot to lose by changing the system. It is also essential that the delivery of affordable housing is in the areas where it is most needed.

We are also concerned that the unavoidably site-specific nature of the right to require will mean negotiations over the proportion, size and type required at an early stage in the process, bringing discussions on viability back in, with risk of the affordable housing numbers being negotiated down. The impact of the levy on affordable housing numbers is something that should be watched very carefully in the test and learn areas, ensuring that these include a range of housing market conditions.

The ‘right to require’ is unlikely to work in small schemes, which would be impractical or unattractive to social landlords to be managing a small number of homes. A cash contribution ringfenced for affordable housing on other sites would be more appropriate in most of these cases.

We are aware of calls to obligate local authorities to require affordable housing in order to ensure it is not overlooked. However we would have concerns about this

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being appropriate in low-value areas where the value of the infrastructure levy is barely sufficient to pay for essential infrastructure and/or there is little demonstratable need for affordable housing. The infrastructure levy will not replace the need for grant funding to develop affordable housing in many areas.

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. There is a big need for affordable housing across most of the country. If sites are bringing forward 100% affordable housing, then that should be recognised as their contribution in lieu of the infrastructure levy. However, affordable housing does still require infrastructure. Funding from government towards infrastructure would help plug this gap. Alternatively, local authorities could use infrastructure levy receipts from other sites to provide this infrastructure.

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

In our experience this is hard to generalise – it depends on the housing market and the amount of market housing that is being provided in Registered Provider led schemes. In high priced markets where a significant proportion of market housing is being included it can be possible to bring forward a high proportion of affordable housing alongside significant other infrastructure. In weaker housing markets, it may not be possible to do much of either. In general, schemes with a high proportion of social housing will be able to fund less infrastructure.

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

Unsure. This question is difficult to answer because there is so much that still appears unclear about the plans at present. It is unclear how LPAs will determine the in-kind contribution that affordable housing represents – Is this worked out from estimated sales receipts at the start? Or is it determined at the end of the process when the sales receipts of market housing on site are known? Planning permission is often sought well before a contract with a Registered Provider is in place, making it hard to know the proposed tenure or size mix, or the degree of 'discount' represented by that housing being social housing rather than market housing.

It is also unclear how a local authority could ask for anything close to 100% of its levy liability to be met by affordable housing, given that the total value of the levy is not known until the market housing is sold, which comes right at the end of the process. A 100% quota would effectively have become a S106 agreement, with all the same issues around site viability.

In general, if these issues can be resolved, we would support local authorities being able to set their own limits. Overall proportions of housing sought via the 'right to require' should be established in the IDS, but the amount sought on individual sites

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may vary. Some large rural districts have more need for affordable housing in some parts of their district than others and this needs to be allowed for.

Chapter 6 – Other areas

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

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.

No response

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

- Community Land Trusts
- Business Improvement Districts
- Local charities – such as a local Wildlife Trust or community group.

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.

This is something that should be established during the test and learn process. It should be set at a level that is sufficient to cover the administrative of the levy but not in excess of it.

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** - Agree
- **self-build housing** - Disagree. Self-build/custom built housing still requires infrastructure. It is not meeting housing need in the way that Affordable Housing does.
- **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

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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?

Unsure. We can see the value in applying a reduced levy rate to developments that exceed the regulated environment standards, but note that this would need to be clearly defined and regulated, adding yet more complexity to an already-complex system. Neither the requirement for infrastructure nor for Affordable Housing would diminish because of higher environmental standards.

We note that there is currently concern in London that introducing the levy in place of S106 will remove the ability to collect S106 carbon offset contributions.

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

Disagree. We think this should be left to local discretion. If small sites make sales receipts, then a fixed levy rate will result in a smaller payment. There is no inherent reason to exclude small sites. Some areas see a significant proportion of their new housing in small infill sites, and need to have funding for the additional infrastructure required.

There is a risk that setting thresholds for small sites set in terms of the number of new homes will create perverse incentives to under-deliver housing on sites which around the threshold, or where a larger site can be subdivided.

Question 41: What risks will this approach pose, if any, to SME housebuilders, or to the delivery of affordable housing in rural areas?

The biggest issues for SMEs are likely to be around the increased complexity of the new infrastructure levy. At present SMEs working on sites below the S106 threshold only have to pay CIL which is relatively straightforward. Local authorities should be encouraged not to use the 'right to require' for affordable housing on small sites, but to receive the infrastructure levy in cash instead.

SMEs are more likely to have cash flow difficulties if they have to pay much of the levy up front – payment by instalments would help.

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

Large scale infrastructure should be managed by central government.

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

Some of our local authority members are concerned that it may be difficult to recover the final payments from some developers. They have suggested removing the land charge at a late point in time – though we understand from developers that this would cause them difficulties in selling the homes, so may not be a good solution. An increase in penalties for non-payers may help here.

Chapter 7 – Introducing the Levy

Question 44: Do you agree that the proposed ‘test and learn’ approach to transitioning to the new Infrastructure Levy will help deliver an effective system?

We agree in principle that trying the levy out in a few areas is a good way of testing out how well it works. The government has also rightly recognised that this will take quite a few years because of the complexity involved. We therefore think it is essential to ensure cross-party support for the introduction of the infrastructure levy before moving forward, to avoid wasted effort and resources should there be a change of government at some point in the next 10-15 years.

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?

This would mainly relate to any impact on Affordable Housing delivery – if this is reduced it will disproportionately affect those on lower incomes, young people, women, single parents, larger families and most BME groups.

If the infrastructure levy delivers more funding for infrastructure this would positively affect those who rely on public transport and public services – which includes low income groups, the disabled and older people. However, if it fails to do so, these same groups would be adversely affected. There is therefore a lot at stake.

Conclusion

Overall, we are concerned that the government is moving forward with a technical consultation on this issue, when so much is still unclear.

Our key concerns are around:

- The **complexity of the new system** and risk that it under-delivers Affordable Housing when compared with the system it replaces.
- The **increased financial risks** for both developers (including Housing Associations) and local authorities – both of which are compounded in the current high-inflationary and high interest rate climate.

We look forward to working with Government at The Housing Forum to help take forward the ambition of 300,000 new homes a year, and work towards our ambition of a **Quality Home for All**. Our key [Housing Solutions](#) set out how we think this can be achieved.

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