

29 MARCH 2023

## **PC1-23 | INFRASTRUCTURE LEVY**

### **Summary**

The Infrastructure Levy is a reform to the existing system of developer contributions – Section 106 planning obligations and the Community Infrastructure Levy – in England. The Department for Levelling Up, Housing and Communities (DLUHC) have issued a consultation to inform the design of the Levy and of regulations that will set out its operation in detail.

The main consultation document can be downloaded [here](#). The consultation closes at DLUHC on 9 June 2023.

### **Context**

The consultation seeks insight on:

- technical aspects of the design of the Infrastructure Levy.
- the preparation and content of regulations.

NALC will be responding to this consultation as many local councils will have an interest in feeding in their own views on the existing system of developer contributions and how they relate to proposals for the new Infrastructure Levy.

### **NALC's current policy positions**

NALC will be arguing very strongly that it is right that local councils will receive the 25% neighbourhood share of the Infrastructure Levy. This will ensure communities benefit from development and local councils can invest in local infrastructure and other priorities. It will be important for local councils to have full flexibility in how the levy is used. However, the reported flat share of 25% does not provide an uplift or added incentive for communities that have a made neighbourhood plan in place, which is the presently the case where the Community Infrastructure Levy is charged.

### **Consultation Questions**

The main consultation questions NALC will be responding to in this consultation are as below and NALC seeks the views of county associations and member

councils in response to these questions to help inform its own submission to DLUHC:

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

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

- developments of less than 100 square metres (unless this consists of one or more dwellings and does not meet the self-build criteria) - Yes/No/Unsure
- Buildings which people do not normally go into - Yes/No/Unsure
- Buildings into which peoples go only intermittently for the purpose of inspecting or maintaining fixed plant or machinery - Yes/No/Unsure
- Structures which are not buildings, such as pylons and wind turbines. Yes/No/Unsure

**Question 2: Do you agree that developers should continue to provide certain kinds of infrastructure, including infrastructure that is incorporated into the design of the site, outside of the Infrastructure Levy? [Yes/No/Unsure]. Please provide a free text response to explain your answer where necessary.**

**Question 3: What should be the approach for setting the distinction between integral and Levy-funded infrastructure? [see para 1.28 for options a), b), or c) or a combination of these]. Please provide a free text response to explain your answer, using case study examples if possible.**

**Question 4: Do you agree that local authorities should have the flexibility to use some of their levy funding for non-infrastructure items such as service provision? [Yes/No/Unsure] Please provide a free text response to explain your answer where necessary.**

**Question 5: Should local authorities be expected to prioritise infrastructure and affordable housing needs before using the Levy to pay for non-infrastructure items such as local services? [Yes/No/Unsure]. Should expectations be set through regulations or policy? Please provide a free text response to explain your answer where necessary.**

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

**[Yes/No/Unsure] Please provide a free text response to explain your answer where necessary.**

**Question 7: Do you have a favoured approach for setting the ‘infrastructure in-kind’ threshold? [high threshold/medium threshold/low threshold/local authority discretion/none of the above]. Please provide a free text response to explain your answer, using case study examples if possible.**

**Question 8: Is there anything else you feel the government should consider in defining the use of s106 within the three routeways, including the role of delivery agreements to secure matters that cannot be secured via a planning condition? Please provide a free text response to explain your answer.**

## **Chapter 2: Levy rates and minimum thresholds**

**Question 9: Do you agree that the Levy should capture value uplift associated with permitted development rights that create new dwellings? [Yes/No/Unsure]. Are there some types of permitted development where no Levy should be charged? [Yes/No/Unsure]. Please provide a free text response to explain your answer where necessary.**

**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?**

**Question 11: Is there is a case for additional offsets from the Levy, beyond those identified in the paragraphs above to facilitate marginal brownfield development coming forward? [Yes/No/Unsure]. Please provide a free text response to explain your answer where necessary, using case studies if possible.**

**Question 12: The government wants the Infrastructure Levy to collect more than the existing system, whilst minimising the impact on viability. How strongly do you agree that the following components of Levy design will help achieve these aims?**

- Charging the Levy on final sale GDV of a scheme [Strongly Agree/Agree/Neutral/Disagree/Strongly Disagree/Unsure]**
- The use of different Levy rates and minimum thresholds on different development uses and typologies [Strongly Agree/Agree/Neutral/Disagree/Strongly Disagree/Unsure]**

- Ability for local authorities to set 'stepped' Levy rates [Strongly Agree/Agree/Neutral/Disagree/Strongly Disagree/Unsure]
- Separate Levy rates for thresholds for existing floorspace that is subject to change of use, and floorspace that is demolished and replaced [Strongly Agree/Agree/Neutral/Disagree/Strongly Disagree/Unsure]

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

### **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? [Yes/No/Unsure] Please provide a free text response to explain your answer where necessary.

**Question 15:** Is there an alternative payment mechanism that would be more suitable for the Infrastructure Levy? [Yes/No/Unsure] Please provide a free text response to explain your answer where necessary.

**Question 18:** To what extent do you agree that a local authority should be able to require that payment of the Levy (or a proportion of the Levy liability) is made prior to site completion? [Strongly Agree/Agree/Neutral/Disagree/Strongly Disagree/Unsure]. Please explain your answer.

**Question 19:** Are there circumstances when a local authority should be able to require an early payment of the Levy or a proportion of the Levy? Please provide a free text response to explain your answer where necessary.

### **Chapter 4: Delivering infrastructure**

**Question 21:** To what extent do you agree that the borrowing against Infrastructure Levy proceeds will be sufficient to ensure the timely delivery of infrastructure? [Strongly Agree/Agree/Neutral/Disagree/Strongly Disagree/Unsure]. Please provide a free text response to explain your answer where necessary.

**Question 22:** To what extent do you agree that the government should look to go further, and enable specified upfront payments for items of infrastructure to be a condition for the granting of planning permission? [Strongly Agree/Agree/Neutral/Disagree/Strongly Disagree/Unsure] Please provide a

**free text response to explain your answer where necessary.**

**Question 23: Are there other mechanisms for ensuring infrastructure is delivered in a timely fashion that the government should consider for the new Infrastructure Levy? [Yes/No/Unsure] Please provide free text response to explain your answer where necessary.**

**Question 24: To what extent do you agree that the strategic spending plan included in the Infrastructure Delivery Strategy will provide transparency and certainty on how the Levy will be spent? [Strongly Agree/Agree/Neutral/Disagree/Strongly Disagree] Please provide a free text response to explain your answer where necessary.**

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

**Question 26: Do you agree that views of the local community should be integrated into the drafting of an Infrastructure Delivery Strategy? [Yes/No/Unsure] Please provide a free text response to explain your answer where necessary.**

**Question 27: Do you agree that a spending plan in the Infrastructure Delivery Strategy should include:**

- Identification of general integral infrastructure requirements
- Identification of infrastructure/types of infrastructure that are to be funded by the Levy - Prioritisation of infrastructure and how the Levy will be spent
- Approach to affordable housing including right to require proportion and tenure mix
- Approach to any discretionary elements for the neighbourhood share
- Proportion for administration
- The anticipated borrowing that will be required to deliver infrastructure
- Other - please explain your answer
- All of the above

**Question 28: How can we make sure that infrastructure providers such as county councils can effectively influence the identification of Levy priorities?**

- Guidance to local authorities on which infrastructure providers need to be consulted, how to engage and when
- Support to county councils on working collaboratively with the local authority as to what can be funded through the Levy

- Use of other evidence documents when preparing the Infrastructure Delivery Strategy, such as Local Transport Plans and Local Education Strategies
- Guidance to local authorities on prioritisation of funding
- Implementation of statutory timescales for infrastructure providers to respond to local authority requests
- Other - please explain your answer

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

#### **Chapter 5: Delivering affordable housing**

**Question 30: To what extent do you agree that the 'right to require' will reduce the risk that affordable housing contributions are negotiated down on viability grounds? [Strongly Agree/Agree/Neutral/Disagree/Strongly Disagree/Unsure] Please provide a free text response to explain your answer where necessary.**

**Question 31: To what extent do you agree that local authorities should charge a highly discounted/zero-rated Infrastructure Levy rate on high percentage/100% affordable housing schemes? [Strongly Agree/Agree/Neutral/Disagree/Strongly Disagree/Unsure] Please provide a free text response to explain your answer where necessary**

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

**Question 33: As per paragraph 5.13, do you think that an upper limit of where the 'right to require' could be set should be introduced by the government? [Yes/No/unsure] Alternatively, do you think where the 'right to require' is set should be left to the discretion of the local authority? [Yes/No/unsure]. Please provide a free text response to explain your answer where necessary.**

#### **Chapter 6: Other areas**

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

**Question 35: In calculating the value of the Neighbourhood Share, do you think this should A) reflect the amount secured under CIL in parished areas (noting**



**this will be a smaller proportion of total revenues), B) be higher than this equivalent amount C) be lower than this equivalent amount D) Other (please specify) or E) unsure. Please provide a free text response to explain your answer where necessary**

**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?**

**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.**

**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 countrywide exemptions. How strongly do you agree the following should be retained:**

**- residential annexes and extensions; [Strongly Agree/Agree/Disagree/Strongly Disagree]**

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

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

**Question 39: Do you consider there are other circumstances where relief from the Levy or reduced Levy rates should apply, such as for the provision of sustainable technologies? [Yes/No/Unsure]. Please provide a free text response to explain your answer where necessary.**

**Question 40: To what extent do you agree with our proposed approach to small sites? [Strongly Agree/Agree/Neutral/Disagree/Strongly Disagree/Unsure] Please provide a free text response to explain your answer where necessary.**

**Question 41: What risks will this approach pose, if any, to SME housebuilders, or to the delivery of affordable housing in rural areas? Please provide a free text response using case study examples where appropriate.**

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

**Question 43: Do you agree that these enforcement mechanisms will be sufficient to secure Levy payments? [Strongly Agree/Agree/Neutral/Disagree/Strongly Disagree/Unsure] Please provide a free text response to explain your answer where necessary.**

#### **Chapter 7: Introducing the Levy**

**Question 44: Do you agree that the proposed 'test and learn' approach to transitioning to the new Infrastructure Levy will help deliver an effective system? [Strongly Agree/Agree/ Neutral/Disagree/Strongly Disagree/Unsure] Please provide a free text response to explain your answer where necessary**

#### **Your evidence**

Please email your responses to this consultation to [chris.borg@nalc.gov.uk](mailto:chris.borg@nalc.gov.uk) by 17.00 on 19 May 2023. County associations are asked to forward this briefing onto all member councils in their area.

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