



CIH Briefing on the Levelling Up and Regeneration Bill: scrutiny of the Infrastructure Levy

July 2022

We welcome that housing and planning are given such central roles in the government's plans for levelling up in the emerging legislation. However, it is crucial that changes to the planning system proposed in this Bill protect the delivery of much-needed affordable housing.

The country is facing a worsening affordable housing crisis, with [4.2 million people in need of social housing in England](#). This equates to 1.6 million households – 500,000 more than the 1.1 million households recorded on official waiting lists. Long-term, sustained investment in social housing is the only way to change this and there is therefore a compelling case for putting an ambitious programme of new affordable housebuilding at the heart of levelling up.

For our full written evidence submission to the committee please see [here](#)

The Infrastructure Levy

Along with the National Housing Federation, Shelter, Placeshapers and others, the Chartered Institute of Housing has tabled **three suggested amendments** to the Bill in relation to the Infrastructure Levy and which we believe are fundamentally important. These available to view [here](#).

- 1) Our first amendment strengthens the protection of “affordable housing” as it currently exists in the Bill and is tabled as **amendment 155**,

Schedule 11, page 287, leave out lines 34 to 42 and insert—

“(2) A charging authority, in setting rates or other criteria, must ensure that—

(a) the level of affordable housing which is funded by developers and provided in the authority's area, and

(b) the level of the funding provided by the developers, is maintained at a level which, over a specified period, enables it to meet the level of affordable housing need identified in the local development plan.”

Member's explanatory statement: This amendment would require Infrastructure Levy rates to be set at such a level as to meet the level of affordable housing need specified in a local development plan.



In areas of the country where recent affordable delivery is far less than what is required, we must not “bake in” previous poor performance into the system, even as a floor level. This would be a clear step in the wrong direction. Our suggested amendment requires rates of the Infrastructure Levy to be set so as to meet the level of affordable housing need specified in the local plan. This is in line with the government’s commitments to increase the delivery of affordable housing as a key part of levelling up

- 2) Our second amendment seeks clarification about the conditions under which s106 can be retained by local authorities, and is tabled as **amendment 166**.

Schedule 11, page 308, leave out line 25

Member's explanatory statement: This amendment would prevent IL regulations making unspecified provision about how powers under section 106 of TCPA 1990 (planning obligations) are used

Section 106 (s106) is not a perfect system but currently delivers significant numbers of affordable homes and, at its best, creates vibrant mixed communities. In the last three years 2018/19-2020/21 delivery has been 168,175 affordable homes (average 56,058 annually) of which 76,485 (av. 25,495 annually) have come via s106 contributions with no grant. That is 45 per cent. Of the 76,485 over the three years, 46,795 were for rent, of which 10,298 were for social rent. This demonstrates that s106 is an extremely important source for delivery of rented homes at no cost to the Affordable Homes Programme.¹ Our second amendment seeks clarification about the conditions under which s106 can be retained by local authorities

- 3) Our third amendment seeks exemptions from the levy for 100 per cent affordable housing developments is tabled as **amendment 154**.

Schedule 11, page 285, line 35, at end insert—

“(9) IL regulations must provide for exemption from liability to pay IL in respect of a development which exclusively contains affordable housing.”

Member's explanatory statement: This amendment would provide for an exemption from liability to pay IL in respect of a development which contains 100 per cent affordable housing

We welcome the commitment that charities will not pay the Levy. However, the commitment to make 100 per cent affordable housing sites exempt from the Levy is not included in the Bill itself. We propose an amendment which secures exemptions from the levy for schemes led by registered providers of social housing.

We encourage you to support these amendments at committee stage.



Other matters to note about IL

- One of section 106's great strengths is the delivery of onsite affordable housing, creating genuinely mixed communities to support a range of housing types, sizes and tenures to meet different needs. Government is proposing to give local planning authorities a right to require the affordable housing element of IL to be provided via on-site provision, but it will be at their discretion. Lacking in statutory force, it is not clear how much scope LAs will have to mandate this. Our preference is that on-site delivery should be the default to create mixed communities and avoid segregation of affordable housing.
- We remain concerned that including affordable housing delivery in the same funding 'pot' as infrastructure could either leave insufficient funding for key infrastructure, or spending on infrastructure would mean less genuinely affordable housing is delivered. We seek further reassurance against the risk of the combined levy creating trade-offs between affordable housing and infrastructure.
- Key questions remain about how affordable housing will be delivered in locations where values are very low and where development will not generate sufficient value to charge IL. This is likely to disproportionately impact on local authorities in the North of England and we would question how this fits with the government's 'levelling-up' agenda.
- Rural circumstances also need to be considered including the small scale of most development sites and limited supply of residential sites. It is likely that in some areas small sites will not generate sufficient value to charge IL and therefore neither 'in-kind' nor financial contributions for affordable housing will be paid, resulting in development that does not include affordable housing to meet the needs of the community.
- We welcome the mandatory status of the Levy and are pleased that the government is recognising that currently in some situations the viability argument is manipulated by some developers to evade their responsibilities and not honour their commitment. We do have concerns that some developers will be able to exercise huge pressure and resources to influence the levy-setting process.
- The criteria for 'large sites' where s106 will still be in play is not defined in the Bill and there will be a number of locations where CIL will still be in play. A lot of detail is missing on how this will work. S106 is a well understood tool by LPAs, developers, and social housing providers. There is a risk that in attempting to make things simpler the process which is already complicated becomes even more so by having a layering of the system with s106, CIL and IL all at play in different locations.

Contact

If you have any questions or would like any further information on this briefing, please contact policyandpractice@cih.org

¹ All data from [The UK Housing Review](#) 2022 (table 20a) and from [government data on affordable housing supply](#).