

Chartered Institute of Housing submission to the technical consultation on the Infrastructure Levy (June 2023)

Chartered Institute of Housing (CIH) welcomes the opportunity to respond to this consultation on the Infrastructure Levy (IL/the Levy).

In drafting our response, we have consulted with CIH members via a member opinion panel questionnaire and a round table discussion event.

We have not responded to all the questions in the consultation document, and instead focused on those questions where we are best placed to comment (primarily around affordable housing).

We would be happy to discuss any details of our response and would welcome further dialogue on this topic.

Preliminary observations and concerns

We share the government's aspiration for greater certainty and clarity around developer contributions, with less ability for the negotiating down of contributions on viability grounds. However, we have multiple concerns around the IL proposals, as set out in our answers to the questions which follow. In summary:

- Despite assurances since the IL was proposed in 2020 that it will deliver “at least as much affordable housing as developer contributions do now”, we remain concerned that this new system will lead to a reduction in much needed truly affordable homes, particularly social rented homes.
- The use of IL receipts to fund needs unconnected to the development risks the funding for affordable housing and infrastructure being used to finance other priorities and to ‘plug gaps’ in stretched local authority budgets. Loosening the link between what the Levy is raised *from* and what it is used *for* could lead to a situation where the levy becomes more like a tax- set and spent according to purposes unconnected to the development.
- Despite the ‘right to require’, the proposals could have serious implications for the onsite delivery of affordable homes and the important creation of mixed communities. The ‘right to require’ should be coupled with a ‘requirement to deliver’ affordable housing on-site.
- The IL is unlikely to support the government’s own ambitions to ‘level up’ the country, and this will be particularly pronounced in locations with low land

values, where affordable and social housing need can be acute and the need to 'level up' most urgent.

- For any given area and/or typology of development, a levy will have to be set at a low enough level to avoid ruling out schemes of low value and/or high cost. Therefore, it will be insufficient to deliver the potential value capture from schemes of higher value and/or lower cost.
- Rather than providing a simpler system, the proposals add layers of complexity. This will create a system with many variables and scope for negotiation, which will be a significant burden on already stretched local planning authorities.

Reform is preferable to a radical shift in system

The change from the Section 106 (s106) system to Levy will present a disruptive change. Given the current climate of housing emergency, we consider the resources and work associated with getting this complex new IL up and running would be better used to remedy the difficulties with the current system.

Whilst there are undoubtedly limitations and frustrations with s106, it does have several considerable benefits, including:

- Developer contributions through s106 play a critical role in delivering affordable and social housing, with s106 alone currently accounting [for almost 50 percent of all affordable homes](#) delivered annually. With low levels of investment in social housing, s106 is a vitally important tool for funding social homes through the planning system.
- At its best it creates vibrant, genuinely mixed communities to support a range of housing types, sizes and tenures to meet different needs.
- It allows for flexibility and negotiation on a site-by-site basis.
- It is a well understood tool by local planning authorities, developers, and social housing providers.

Therefore, along with others in the sector, CIH would welcome the opportunity to discuss with government how improvements to the current system might be explored.

Improved resourcing of local authority planning teams (both for officers and legal teams) would be a first important step to dealing with many of the frustrations of the current system in terms of dissatisfaction around delays and slow timescales.

Ch1 - Fundamental design choices

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.

We do not consider that local authorities should have the flexibility to use some of their Levy funding for non-infrastructure items. There is a risk in such an approach that IL receipts could be used to 'plug gaps' in much stretched local authority budgets in areas quite unrelated to the development. The current rules around s106 and CIL contribution should be retained.

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.

We consider that affordable housing and infrastructure should be prioritised in order that they are protected. Levy receipts should not be siphoned off towards unspecified forms of expenditure and away from affordable housing delivery; particularly social rented housing which we know is the most affordable housing and much needed in the current housing climate.

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

No.

There should be a presumption against broadening out the spending scope of the Levy.

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]

Local authority discretion

Local authorities are best placed to decide this.

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?

Whilst s106 is an imperfect tool and some scheme negotiations can be protracted, it does allow for flexibility and discretion on a site-by-site basis. It is also a well understood tool by all involved and critically important in the delivery of affordable homes, particularly social rented homes.

Even under the ‘core-levy’ routeway many residential development sites will still require negotiated s106 agreements to deal with on-site requirements such as securing First Homes (in particular the covenants for perpetuity), and non-financial obligations regularly sought from proposals (such as employment and training strategies, management and maintenance obligations for onsite play areas and other communal spaces).

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

Dwellings delivered through permitted development rights (PDRs) bring the same need for growth in infrastructure provision and affordable housing as those delivered through planning consent. The current system does not capture this uplift through PDRS conversions that create new dwellings and any new system (or amendment to the current system) should rectify this. A 2018 RICS study of the [impacts of extended PDRs](#) across five local authorities estimated that those local authorities lost a combined total of £10.8m in section 106 funds over a four-

year period as a result of the rights being exercised. The study's authors described office-to-residential permitted development as a 'fiscal giveaway from the state to private-sector real-estate interests'. In 2018, [research by Shelter](#) estimated that urban authorities had missed out on more than 10,000 affordable homes between 2015/16 and 2017/18 alone because local authorities cannot enter into s106 agreements with developers and require a supply of on-site or off site affordable housing contributions under the PDR system. With the extension of PDR over recent years the scale of missed contributions is likely to be even higher.

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?

Potentially yes as there could be a case for exceptions and additional consideration and support for redevelopment of difficult brownfield sites. However, combined with the bespoke agreements for integral infrastructure and the various flexibilities on thresholds and rates proposed, this could lead to a system which is even more complicated than the current one, but which lacks consideration of specific site and development factors.

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 • The use of different Levy rates and minimum thresholds on different development uses and typologies • Ability for local authorities to set 'stepped' Levy rates - • Separate Levy rates for thresholds for existing floorspace that is subject to change of use, and floorspace that is demolished and replaced

The final GDV of a development is not known until the point of sale and can change over time. This means that until the point of sale (if sold), neither the developer nor the local authority can be certain of the extent of the due. GDV also does not consider any increase in development costs that may have occurred during the process and any delays to the programme and other costs. There will be considerable risks to the local authority who will be borrowing against an uncertain income which could be less than that on which the loan was granted. This will be particularly risky for small local authorities (including rural authorities)

with limited financial capacity and smaller levels of development to have a portfolio that enables them to absorb this risk.

Whilst we support the use of different Levy rates and minimum thresholds for different development uses and typologies, in order for the Levy to avoid making a wide range of development types unviable there will need to be detailed viability testing of a very large number of development typologies - which is likely to result in a complex and unwieldy charging schedule incorporating a very large number of bespoke charging rates and minimum thresholds.

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?

Disagree

The Levy removes the flexibility to negotiate on a site-by-site basis, and we consider it will effectively just move this debate 'upstream' to the rate-and-threshold setting process. Here a myriad of information will be disputed, and it is reasonable to expect that developers and landowners will engage in this process forcefully and (in a similar way to the current system where viability consultants are employed in negotiating s106 contributions) are likely to be able to significantly out-resource many local authorities.

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.

High percentage and 100 per cent affordable housing schemes are themselves an important contribution in-kind and are not intended to generate private profit from sites (any profit being used for re-investment in affordable housing). Where market housing is included, this is to provide cross subsidy up to the point that the scheme becomes financially viable. The viability of these schemes is often problematic and with viability difficulties to face around building safety and net zero requirements, as well as general economic and construction sector difficulties, there is a public interest case for reducing their exposure to the Levy.

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

For schemes with high levels of affordable housing it can be difficult to maintain viability, particularly if there are significant infrastructure requirements. Usually, the infrastructure delivered is limited to integral infrastructure given tight viability margins.

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?

No. We do not favour an upper limit.

Where the 'right to require' is set should be left to the discretion of local authorities who understand their localities' requirements.

However, we note with great concern that the consultation document states that local authorities "will not be obliged to seek their full entitlement of onsite affordable housing", as set out under their 'right to require' and that this will "enable them to redirect Levy resources towards other infrastructure priorities when necessary, balancing this appropriately with the affordable housing needs of their area" (para 5.12). This weakens with premise of the 'right to require'. It both risks undermining the contribution of onsite affordable housing delivery to the creation of mixed communities, and contributions being diverted to unspecified and unrelated spending.

Chapter 6 - Other areas

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

We consider that the small sites threshold should be set locally rather than nationally. Small sites play an important role in delivering affordable housing in both urban and rural locations. Some areas, including some cities, have many small sites and very few larger sites. In such areas, a number lower than 10 might be appropriate if viability can be demonstrated.

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.

The 10-dwelling threshold presents a problem for rural areas which fall outside of the definition of “designated rural areas” (which is a significant number of rural communities). In rural areas, site supply is very small, as are the sites themselves. The 10-dwelling threshold will therefore discriminate against them as no affordable housing will be provided on market schemes in these locations. Changing the definition of ‘designated rural areas’ to all parishes with populations of 3k or less and in all parishes in AONBs and National Parks to allow local discretion to lower the threshold would be beneficial.

Recent [research by English Rural](#) has demonstrated a largely hidden but devastating wave of homelessness sweeping through rural areas, meaning the need for affordable housing delivery (particularly social rented homes which presents the most affordable tenure) is critical. These proposals seem to run counter to the reforms to the national planning policy consultation’s aspirations earlier in the year, for increasing use of small sites.

This approach will also not help SME housebuilders in these rural locations, for whom having affordable housing is very helpful (guaranteeing income and supporting cash flow). It will also make it difficult for SME builders to compete for sites, as without affordable housing, the sites will attract full open market value.

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?

Agree

We welcome a ‘test and learn’ approach and the transitioning support which the consultation document explains will be available to local authorities as the move to this very different but equally complex system will require substantial time and resources. There is likely to be variability between local authorities about their readiness to implement the IL. CIL charging local authorities may be in a stronger position to engage with the IL proposal than non-CIL charging authorities. It is extremely important that local authority planning and housing teams have the necessary resources and skills required for this change. However, it is important

that the unintended consequences of a 10-year roll out are adequately considered. This is an extremely long roll out timeframe which will mean different parts of the country operating under different systems for large amounts of time.

Question 45: Do you have any views on the potential impact of the proposals raised in this consultation on people with protected characteristics as defined in section 149 of the Equality Act 2010? [Yes/No/Unsure]. Please provide a free text response to explain your answer where necessary.

A planning system that does not enable local authorities to meet the needs of their local communities will inevitably have a negative impact on people with protected characteristics.

The supporting report published alongside the consultation indicates that whilst the IL might capture more value from greenfield sites in high value areas, it is likely that a shift to the IL would reinforce geographical inequalities already evident in the current system. This goes against the government's own levelling up agenda and should be considered very seriously. Groups of people with protected characteristics are disproportionately represented low value areas; precisely those which will receive less benefit from the proposed Levy.

We support the government's ambition to reduce inequalities through levelling up. It is our view that this cannot be meaningfully delivered without boosting the country's supply of good quality, genuinely affordable housing and homes for social rent.

About CIH

The Chartered Institute of Housing (CIH) is the independent voice for housing and the home of professional standards. Our goal is to provide housing professionals and their organisations with the advice, support, and knowledge they need. CIH is a registered charity and not-for-profit organisation. This means that the money we make is put back into the organisation and funds the activities we carry out to support the housing sector. We have a diverse membership of people who work in both the public and private sectors, in 20 countries on five continents across the world. Further information is available at: www.cih.org.

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June 2023