



Chartered
Institute of
Housing

What you need to know about the technical consultation on the Infrastructure Levy

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This consultation seeks views on the technical aspects of the design of the new Infrastructure Levy (referred to as IL or the Levy). The consultation applies to England only and runs from 17 March to 9 June.

This is a very detailed technical consultation, seeking views on almost every aspect of how the new system would work. This member briefing provides a summary overview, with a focus on the consultation elements which are most pertinent to housing, in particular the delivery of affordable housing. Greater detail on the scope of the consultation can be found on the [DLUHC consultation page](#).

CIH will be preparing a response to this consultation. Please get involved and share your views by emailing policyandpractice@cih.org.

Introduction

Under the current system there are two broad routes for local authorities to secure developer contributions:

- Planning obligations through Section 106 (s106) negotiated with developers
- The Community Infrastructure Levy (CIL) which is a fixed charge levied on the floorspace of new development.

A new Infrastructure Levy was first discussed to replace these two routes in the 2020 White Paper: [planning for the future](#). A frequent criticism of the s106 process is that it is subject to negotiation which can be time consuming and uncertain, and CIL is not used by many local authorities partly because of its inflexibility.

This consultation document states that “the government wants to make sure that local authorities receive a fairer contribution of the money that typically accrues to landowners and developers”. To do this the [Levelling Up and Regeneration Bill \(LURB\)](#) (which at the time of this consultation is currently at the committee stage in the House of Lords) seeks to replace the current system with a locally determined Infrastructure Levy.

The Levy will be charged on the value of the property at completion per square metre and applied above a minimum threshold. By charging the Levy on the value of completed development the intention is that the amount

will increase as development prices increase or reduce as prices drop.

There are three main elements to operating the Levy, which will build on the approaches taken to setting and collecting CIL:

1. Setting the Levy
2. Charging and collecting the Levy
3. Spending the Levy.

Local authorities will be responsible for setting minimum thresholds and Levy rates (and will be able to set differential rates within their area). They will also be responsible for charging, collecting, and spending the Levy. The intention of these changes is to create a swifter, more efficient, transparent, and easier to use system, which reflects local circumstances and priorities.



What's LURB got to do with it?

The detailed design of the new Levy will be set out in regulations (which will themselves be consulted on). The [LURB](#) introduces the following components of the Levy:

- The Levy will be a mandatory charge
- Levy rates are to be set by the local authority taking into account certain factors. This includes the viability of development in the area and the desirability that rates can deliver affordable housing at a level equalling or exceeding what developers deliver now in that area
- There is a process of examination in public of IL charging schedules, in order for rates to be adopted
- The Secretary of State for DLUHC can intervene in the preparation of charging schedules in certain circumstances
- Charging authorities must publish an Infrastructure Delivery Strategy.

Once the Bill reaches Royal Assent, these elements of the IL will feature in primary legislation. Therefore, the government is not seeking views on these aspects of the Levy. This is a technical consultation seeking responses on those elements of design that will be delivered through regulations.

How will the Levy be calculated?

The Levy will be charged on the value per square meter of the development at completion. Each authority will set minimum thresholds on pound per square meter of gross development value basis below which the Levy will not be charged. The consultation document states this minimum threshold will be indexed to a measure of inflation, to account for variation of build costs and to ensure this does not impact on variability.

Integral and Levy funded infrastructure

The document explains that integral and Levy funded infrastructure will be treated differently under the new system. Integral infrastructure (for example on-site play areas, site access and internal highway networks) required for a site to function will be delivered by developers primarily through the use of planning conditions and not through IL. Whereas Levy funded infrastructure will be supported by Levy receipts, this is infrastructure that mitigates the cumulative impact of development on the local area.

Varying rates and thresholds

Authorities will be able to vary the rates and thresholds for different development types and land typologies within their area. The document suggests that this may result in authorities setting a lower rate for brownfield development and a higher rate for greenfield development.

Delivering affordable housing

The consultation document reiterates the government's commitment to deliver "at least as much - if not more- on site affordable housing as developer contributions do now". In setting rates local authorities will need to evidence



whether the rates they set will be able to keep affordable housing at levels that equal or exceed the level of affordable housing provided through developer contributions during a previous time period (to be specified in regulations). This will be tested at examination.

A new 'right to require' is intended to allow authorities to mandate the amount and type of onsite affordable housing. This will allow authorities to set the percentage of the Levy value delivered in-kind by developers and onsite affordable housing. The consultation document seeks views on the 'right to require' and in what circumstances exemptions for the Levy for registered provider led schemes could be appropriate. The intention is that the right to require will stop negotiation by developers on viability grounds which result in less than policy compliant levels of housing and limit the incentive for developers to deliver affordable housing of one tenure type over another. This is because the Levy liability is fixed, the full amount will have to be discharged whether the Levy viability is met via cash or through a combination of cash and in kind contribution of affordable homes.

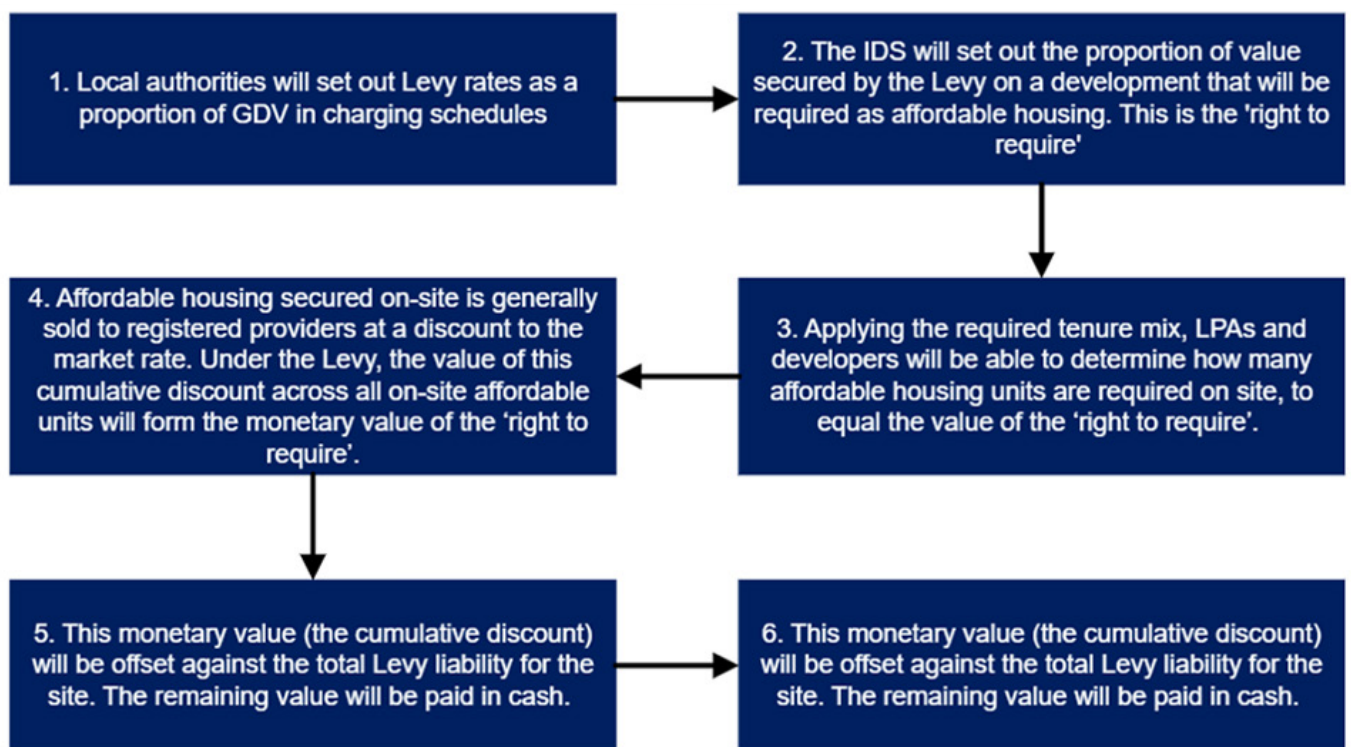
It is noted in the document that "affordable housing means social housing within the meaning of Part 2 of the Housing and

Regeneration Act 2008, or any other description of housing that IL regulations may specify, under section 204A(4) (in Schedule 11 of the Bill). That means the 'right to require' and Levy receipts, can be used to secure affordable tenures such as Social Rent homes, Affordable Rent homes, Shared Ownership homes, and First Homes". The document goes on to say that the Levy has been designed to be adaptable to any potential policy changes around affordable housing tenure types in the future.

It is intended that local authorities will need to engage early and work closely with affordable housing providers and developers to deliver affordable housing that best meets local need. On mixed use development developers will not be required to provide affordable housing on elements of the development that are not residential.

It is noted that local authorities **will not be obliged to seek their full entitlement of on-site affordable housing, as set out under their 'right to require'**. It is stated that will enable them to redirect Levy resources towards other infrastructure priorities when necessary, balancing this appropriately with the affordable housing needs of their area.

Figure 1: The operation of the 'right to require'



Source: <https://www.gov.uk/government/consultations/technical-consultation-on-the-infrastructure-levy/technical-consultation-on-the-infrastructure-levy#chapter-5-delivering-affordable-housing>

The document proposes that authorities will also be able to secure additional affordable housing under a grant pot model by using Levy receipts to 'top up' the price a registered provider is prepared to pay for affordable housing units. This means the developer will still receive the full market value for these additional homes.

Annex C of the consultation provides an illustrative example of how affordable housing might be provided via 'right to require'.

Different routeways for types of development

Different types of development will be subject to one of three different routeways to determine how their contributions are calculated.

The core Levy routeway

The consultation document sets out that this will apply to the majority of development and will require the Levy to be paid in cash by the developers with liabilities based on final Gross Development Value (GDV) above the minimum threshold.

The infrastructure in-kind routeway

This will be for some large and complex sites (the document suggests their preference for a high threshold for this, potentially for schemes over 10,000 homes). This will require developers to provide integral infrastructure via planning conditions or s106 agreements, while an in kind payment of Levy liability secured through s106 agreement will provide all other infrastructure (instead of the Levy charges). The consultation explains that a Levy backstop amount will ensure that the value of any in kind contributions towards infrastructure will have to equal or exceed the value of what would otherwise be secured through a calculation of IL.

S106- only route way

The standard s106 route will be retained for a minority of developments that do not meet the definition of development, for example mineral and waste sites.

How will authorities be paid?

There will be a three-stage payment process:

- An "indicative" calculation will be submitted alongside a planning application
- An initial "estimated" payment will be made between the permission being granted but pre-occupation
- A final balancing adjustment payment will be made once the scheme is completed or sold.

How will the infrastructure be delivered?

Authorities will be required to deliver new infrastructure delivery strategies which will set out how they intend to deliver local infrastructure and spend their Levy proceeds. These strategies will be subject to examination. Also new delivery agreements will be used to secure the integral infrastructure. The consultation document says that the government will retain a constrained narrowly targeted use of s106 agreements which will be known as delivery agreements which will be used to "plug gaps" in what planning conditions cannot secure.

What can the funds be used for?

As previously had been suggested, the consultation document indicates that **the Levy would be able to be spent on non infrastructure matters**. The consultation asks for views on whether the regulations should require that local authorities prioritise affordable housing and physical infrastructure or whether they would be able to spend the Levy money on non-infrastructure matters. This is very concerning from CIH's perspective and raises serious questions about the money raised being used to plug gaps in other areas of local authorities tightly stretched budgets.

The 'neighbourhood share' which currently sees 25 per cent of CIL receipts given to town and parish councils would be maintained under the new system.

Unlike under the current system, authorities will be permitted to borrow against future receipts. The document states that this will be important for ensuring an "infrastructure first" approach to development.

Exemptions and reduced rates

The Levy will apply to all types of development, aside from where exemptions apply. The Levy will replicate some existing exemptions from CIL. The consultation seeks views on the case for other suitable exemptions or reduced rates. Proposed exemptions include:

Residential annexes

Self-build developments

Affordable housing. In effect, the cumulative discount across all on-site affordable housing units will be offset from the whole site's Levy liability as part of the calculation, rather than exempt from the calculation, but the effect is to lower the site's cash liability in proportion with the amount of affordable housing delivered. It is noted that to ease site calculations and the application of exemptions, it may be appropriate to introduce a broad rule of thumb that says, for example, if over a certain percentage of units on a site are affordable tenures, then the entire scheme is exempt from the Levy.

Small sites. Where a scheme meets this threshold (typically fewer than ten units) a reduced Levy rate will be set, and a local authority will not be able to require that a

proportion of receipts are paid in the value of affordable homes. It is noted that in designated rural areas, current policy sets out that local authorities can set lower thresholds. This will be maintained under the Levy so that local authorities can seek permanent in-kind affordable housing on smaller sites.

Government or publicly funded infrastructure.

This exemption through regulations would include development such as all phases of High Speed Rail 2, schemes undertaken by Network Rail, the Northern Powerhouse Rail, publicly funded schools, hospitals, and other medical facilities, or infrastructure to deliver renewable energy. S106 agreements may need to continue to be used alongside the exemption to ensure site specific mitigation is provided.

Permitted development (in some circumstance). It is proposed that the Levy will only be charged on the revenues that the developer receives from a development brought forward under permitted development rights when the value of the square footage of the scheme is over a certain threshold. That minimum and maximum threshold could be set through regulations.

Who would the charging authorities be?

Charging authorities for IL would be the Local Planning Authority, Homes England (where it is the LPA) or Mayoral Development Corporations, as now. The proposed New Town Development Corporations are to be given Mayoral Development Corporation powers, so they would be able to charge IL too.



In London, Mayoral CIL (MCIL) is set and collected by the mayor. The mayor will be able to maintain the application and collection of MCIL alongside the new IL.

How will all of this be enforced?

Developers that don't pay will be subject to a variety of penalties including stop notices, restrictions on occupation and greatly increased financial penalties. Authorities will also be able to charge penalties for late payments.

How will charging schedules be tested?

As with the examination of CIL charging schedules, the local authority will be responsible for appointing an examiner. A draft schedule will be published for consultation, in response to which representations will be sought. Those representations, as with CIL schedules, must be considered prior to submission for examination. The examiner will examine that schedule in public before their recommendations are published. It is intended for the minimum threshold to be indexed to a measure of inflation, to account for variations in build costs.

When can we expect it to happen?

Probably not any time soon. The Levy would be introduced via a phased test and learn approach over the course of 10 years, with the Levy first introduced in a selected number of local authorities before being rolled out gradually.

Will the Levy raise more revenue?

The document sets out that the Levy is designed to be able capture more revenue. Independent research commissioned by the department (discussed under the next heading below) suggests that there is scope to capture more value, with the greatest scope on greenfield sites with higher development values, and that local authorities will have flexibility to set rates on such sites to capture more value. How much more value might be captured will vary from one development to another and depend on multiple factors, including how effectively rates and minimum thresholds are set. When setting rates, local authorities will need to balance their aim to capture land value with the importance of ensuring that land continues to come forward for development. This will be a local judgement and will be informed by the amount of value captured for specific development typologies under the existing system in their area.

With the greatest value to be captured in high value greenfield locations, concerns remain about IL's ability to capture additional value on brownfield land and in areas where land values are low.



Exploring the potential effects of the proposed Infrastructure Levy

Published alongside the consultation document is a study of research led by The University of Liverpool (commissioned by DLUHC). Click [here](#) to access the full report.

The study provides evidence on the potential operation of IL. The findings presented are premised on the initial conception of IL. The study models the potential impacts of the IL across a range of indicative development types. The modelling work contained in the document provides intelligence on the range of rates that the IL might theoretically take in each of 24 hypothetical developments across six real-world local authority case studies. Insights from local authority officers were collected regarding how the IL might be implemented and incorporated into broader planning practice.

This a very detailed report and over 300 pages in length. Several key areas are presented in the conclusions section, in summary these are:

- **The IL represents a fundamental shift in the process by which developer contributions would be sought and managed.** The IL would be conceptually distinct from the existing system. The transition from a cost-based measure to a Levy related to total sales income would represent a fundamental shift in policy with respect to developer contributions. This shift could entail a range of potential outcomes.
- **How much funding might changing the system raise?** There is potential to raise more, but whether this can be realised compared with the existing s106 and CIL system depends not just on rates and thresholds chosen but on the extent of exemptions, how market participants react especially landowners, land promoters and developers, and the extent to which local authority borrowing costs in advance of receiving Levy income reduces what is available to spend. The Levy would seem to work best on greenfield sites in high house prices areas. It does have the potential to raise funds on

developments not currently within the frame of S106 and/or CIL, including purpose built student housing and warehousing.

- **Are LPAs ready for the IL?** 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. However, it is likely that all local authorities will need clear guidance on the process by which IL rates and minimum thresholds should be defined prior to undertaking specific research to support the local implementation of the IL.
- **Further questions for decision makers** It will be important for decision makers to reflect carefully on the potential impacts of the IL on the development industry. For example, it is probable that the IL may prompt developers to reconsider both where and what they develop in response to the landscape of IL rates.
- **The scale of reform implied by the replacement of the existing system with the proposed IL is likely to take considerable time to implement.** A range of possible scenarios are easily imagined over such a transition period: some developers may rush to get applications in before the introduction of the new, unknown, system; other developers may choose to expand their output once the rules are determined; still others may wait in the hope that the new system is itself subsequently modified.
- **Locally raised and spent IL will result in the highest value sites returning the greatest value of developer contributions. It is, therefore, possible that a shift to the IL would increase the geographic inequalities already evident in the current system.**



CIH's initial view

There is much to digest in this consultation and the CIH policy team are currently working through the details.

Our view has long been that given the very important role s106 plays in the delivery of affordable homes (particularly homes at social rent) and its well understood nature by local authorities, developers, and social housing providers, reform of the current system would be a better approach than an entirely new model. Whilst we recognise many of the frustrations with s106, one of the great strengths of this mechanism 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.

We are pleased government has now released further detail on the IL proposals. However, we still have significant concerns in terms of the risks in reductions in the delivery of affordable housing and homes for social rent, the potential diversion of developer contributions away from affordable housing towards other unspecified forms of expenditure, and how the Levy might operate in areas of low land value.

Whilst we welcome a test and learn approach, such a slow implementation period will mean that parts of the country are operating under

completely different systems. This will create an inconsistent system for several years. As the new system is very different from the current system, it seems unlikely to us that these proposals will meet the government's own aspirations of speeding up and simplifying the process.

Over the next few weeks, we will be consulting with members and with others in the sector to formulate our response to this consultation. As part of the affordable housing working group (led by Shelter) of the Better Planning Coalition, we have been [lobbying](#) for several amendments to LURB in relation to IL during its committee stage in the House of Lords. These amendments aim to make affordable housing delivery a clear onsite requirement and to redefine affordable housing as social rented housing within the Infrastructure Levy. Along with the National Housing Federation and others in the sector, we also [wrote](#) to the Secretary of State in March expressing our collective concerns about the impact the proposed IL will have on the delivery of affordable housing.

On 27 April we have a CIH member round table scheduled with members of the DLUHC team to discuss the proposals. If you would like to attend this round table or talk about the proposals with our planning policy lead please email policyandpractice@cih.org.

