



BPF RESPONSE TO DLUHC'S TECHNICAL CONSULTATION ON THE INFRASTRUCTURE LEVY

PREPARED AND SUBMITTED BY

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British Property Federation

1. The British Property Federation (BPF) represents the real estate sector – an industry which contributed more than £116bn to the economy in 2020 and supported more than 2.4 million jobs. We promote the interests of those with a stake in the UK built environment, and our membership comprises a broad range of owners, managers, and developers of real estate as well as those who support them. Their investments help drive the UK's economic success; provide essential infrastructure and create great places where people can live, work, and relax.
2. We welcome the opportunity to respond to DLUHC's technical consultation on the Infrastructure Levy and are grateful for the department's engagement with the BPF on the policy proposals to date. We provide a number of general comments on the consultation proposals before responding directly to the consultation questions.

General comments on DLUHC's Technical consultation on the Infrastructure Levy

3. BPF members have fundamental concerns with the design of the new proposed Infrastructure Levy. It will result in a more complicated system of developer contributions which will likely slow down the development process and undermine the delivery of associated infrastructure in a timely manner. Policymakers should seriously consider whether reform to the existing system of CIL and S106 would be a more effective route of delivering on government objectives for reform, particularly around striving for a simpler system of developer contributions.

The concerns around the sheer complexity of this new levy relate to a number of the fundamental design aspects of the charge. These areas include setting levy rates (particularly for brownfield/urban development), the review mechanisms proposed to determine final levy amounts, the delivery mechanism for affordable housing provision and the additional burdens that will be placed on local authorities to administer the levy and deliver the infrastructure themselves.

Policymakers should consider whether the proposals are really delivering on stated government ambitions to reduce the overall complexity of developer contributions as industry feedback (from different parts of the built environment sector and indeed public sector stakeholders) have all to date suggested that the proposals in their current form will do the exact opposite.

The current deficiencies in the existing system of developer contributions are of course recognised by the sector however it is also the case that the issues within the existing system are superseded by the fundamental structural challenges the new Infrastructure Levy would introduce for applicants and local authorities. By way of an alternative approach to policy reform, we would suggest that DLUHC policymakers instead focus their efforts on working with industry to address the issues with CIL and S106 rather than pursue an entirely new structure of developer contributions all together.

4. **The Infrastructure Levy cannot deliver the Government's objectives set for it.** There are conflicts in its design that simply cannot be resolved. The primary one of these is a trade-off between simplicity and

optimisation of what is raised. A simple levy must be set on the low side to take account of the different development economics of a multitude of different development scenarios on different sites. Current arrangements with S106 enables contributions such as affordable housing to be agreed on a scheme-by-scheme basis. This more flexible approach enables schemes to deliver greater levels of developer contributions in overall terms. The Government approach of a more rigid levy is therefore more likely to deliver less. There are concerns from the sector that the suggested mechanism for delivering affordable housing will in particular lead to much lower levels of delivery than currently achieved under CIL and S106.

5. **The approach to set levy rates at the plan-making stage before full scheme requirements and costs can be understood is extremely concerning.** This approach could result in many development schemes being rendered unviable (i.e. when additional costs are identified at application stage) unless a high level viability assessment undertaken to set the Levy rate factors in substantial allowances for increased or abnormal costs alongside other things like finance charges, which would then mean that the Levy rate is unlikely to capture more income.

The proposal to calculate final Levy liability based only on value, with no regard to final or changing costs is also a fundamental flaw of the levy design. This could lead to instances where the developer is severely financially penalised under the new system (e.g. in a scenario where increases in costs overtake or even just outpace values).

6. **The granular nature of land values in urban areas will make setting accurate levy rates almost impossible for brownfield development and forms of development that do not come forward often locally.**

The sheer complexity of setting accurate levy rates in urban areas was undoubtedly the most common concern we heard from members during our stakeholder engagement events. We heard that trying to work out what level to set the levy for different typologies would be an extremely challenging exercise for local authorities to get right. This is because land values and indeed build costs can vary site by site even within a specific area of for example a London Borough.

The granularity and level of detail that would need to be achieved as part of the rate setting process would lead to one of the following two scenarios, both of which would fail to deliver on government's policy objectives for reform:

1. Over time, owing to the challenge of setting accurate rates in urban locations, local authorities could be incentivised to set lower-level tariffs to guard against viability concerns. This would result in less developer contributions being extracted from the system than the current more flexible system of S106 and CIL.
2. Levy rates are set too high, meaning that development is unviable and does not come forward locally. Broader government policy to deliver 'development in the right places' would therefore be undermined as the levy would in this scenario be acting as a mechanism to slow and stifle development activity.

A related challenge for local authorities would also be setting levy rates for the forms of development that do not come forward often locally. In practice, it would be hard to see how an accurate tariff could be set for these forms of development locally as the process of determining what an infrequent scheme can contribute is typically fleshed out in a detailed viability assessment under the existing system.

7. **The Infrastructure Levy has clearly been designed for greenfield development in particular but is being implemented as a 'one size fits all' solution' for all forms of development. Given the complexity of the new tariff, this is a disproportionate approach to policy reform.** We note the academic research published alongside this consultation which has suggested there are more value capture opportunities for greenfield development however the new levy will not lead to any fundamental changes to the amount collected through developer contributions for urban development.

Imposing an entirely new system of developer contributions with only one form of development in mind (greenfield housing development) would on the surface appear not to be the best basis to construct an entirely new system of developer contributions for all forms of development on, particularly when you consider the complexity of the new tariff as well. As noted above, we would reiterate the value in pursuing a more incremental approach to reform through the existing system of S106 and CIL which would likely lead to a more effective system of developer contributions for all forms of development.

8. **If government are wedded to reform, the Infrastructure Delivery Strategy will need to be elevated to the same importance as the new tariff:** It was noted by members that the majority of the consultation is devoted to the policy design of the new tariff with less consideration of how the infrastructure will be delivered in practice under the new system. Making sure that the infrastructure is delivered in a timely fashion is arguably more important than the tariff itself.

Culturally, it will therefore be important for those who implement the new tariff to see the delivery of the infrastructure as just as important as the taxation part of the process. More thought will be needed on making sure there are effective structures to hold local authority decisionmakers to account if infrastructure is not being delivered efficiently. Members are aware of certain local authorities sitting on big pots of CIL money which certainly should not be repeated under any new system should reform happen.

A related issue for DLUHC to consider will be the mechanisms that will be needed to make sure the utility companies are 'paying their way' under the new system given they will benefit over time from the new infrastructure. Effective 'clawback' mechanisms in this sphere should be a key feature of the Infrastructure Delivery Strategy workstream.

9. **Local authorities 'borrowing against' the Infrastructure Levy:** The BPF are in principle supportive of local authorities being able to borrow to forward fund infrastructure. However, our members do have some concerns that because of the way the levy is designed there will likely be uncertainty over future levy receipts. For example, the various review mechanisms over final levy amount builds uncertainty into the process as well as fluctuations in build costs which both could mean the infrastructure costs more to

deliver further down the line. This could undermine council decision makers' confidence in giving authorities the permission to borrow against the levy in practice which would in turn further undermine the delivery of infrastructure.

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

10. The BPF are broadly supportive of continuing the existing definition of development under the CIL regime for any new system of developer contributions in the future.

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]

11. Yes – it is extremely concerning that the primary responsibility for delivering infrastructure will sit with local authorities. It is likely that this system will lead to less infrastructure being delivered in practice.

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]

12. The BPF are in favour of a nationally set list to distinguish between 'integral' and 'levy-funded' infrastructure to ensure a consistent approach across local authorities. A clear national approach would also hopefully avoid certain local authorities being able to 'double dip' for infrastructure items.

13. We would also note that this is one of the many areas of the consultation which builds more complexity into the system of developer contributions. For example, for certain larger development schemes it may be more challenging to distinguish effectively between infrastructure integral to the site and wider infrastructure as there will undoubtedly be overlap and 'grey areas' for certain larger schemes.

14. A broader point for DLUHC to consider is distinguishing effectively between infrastructure funded through general taxation and infrastructure funded through this new proposed system of developer contributions.

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]

15. There may be scope to use some levy receipts to fund service provision when it relates to infrastructure directly for a certain period of time (as is the case under the existing system of S106 and CIL) however the levy certainty should not be used to fund ongoing service provision.

16. As a general rule, levy receipts should also not be used for service provision when the service is not related to infrastructure in any way, nor should it fund items which general taxation typically pays for.

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]

17. Yes.

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]

18. The BPF are not supportive of levy receipts being diverted away to fund other council services as this further erodes the link between development and the delivery of necessary infrastructure. It should be noted that one of the challenges all developers face in bringing forward schemes locally is a perception that the development will place additional burdens on local infrastructure. It is therefore counter-intuitive to divert any levy receipts away to items which cannot be deemed infrastructure as this would simply make the existing perception problem among communities worse. As a general rule, all developer contributions should be spent on local and strategic infrastructure provision as the purpose of the system is to fund infrastructure to mitigate and manage the impact of development locally.

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]

19. The BPF are in favour of local authorities being given the discretion to determine which proposed 'routeway' a site should go down. It will be the local authorities taking decisions on strategic sites so they will be best placed to determine the appropriate routeway locally. More broadly, the thrust of the overall proposals in the consultation is about empowering local authorities so this wider context also furthers the case for it to be local authorities taking the decision over which routeway.

20. It should be noted that this section of the consultation (in terms of defining which routeway a site will go down) is extremely housing focused in terms of the listed qualifying criteria for the different

routeways. Certain urban schemes (such as Kings Cross) may not be the largest in terms of the overall number of homes however the scheme did have a challenging context in terms of the wider infrastructure provision needed. The nuance and complexity of bringing forward brownfield development and associated infrastructure (irrespective of overall scheme size) further makes the case that it should be the local authorities determining which routeway sites go down.

21. Despite our support for local authority discretion, we would also stress that there will need to be a robust process of challenge and examination should there be disagreement over the most appropriate routeway for a site to go down locally. The wider examination process for the new tariff is naturally the best part of the process for any disagreements to be handled.
22. It should also be noted that this is one of the many areas of the consultation that places additional skill requirements on local authorities so upskilling in this sphere will need to be a focus going forward.

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?

23. Members fed back that the consultation does not really explain the difference between the new proposed 'delivery agreements' and a typical S106 agreement. Clarity will need to be provided as the details of the new levy are worked up through secondary legislation and regulations.
24. We would also make the point that as the regulations for the new tariff are worked up, they will need to set out clearly the restrictions around integral and non-integral infrastructure to guard against 'double dipping'.
25. As noted in our general remarks, the BPF are more in favour improving the existing system of CIL and S106 rather than the introduction of the new levy. During our various roundtables, our members fed back that in many instances S106 can be a useful 'problem solving' tool because it is flexible and enables applicants to design bespoke agreements to maximise the contribution of the given development scheme to economic, social, and environmental objectives. There is a danger that the new levy focuses too heavily on the financial aspects of developer contributions and thus the bespoke contributions (typically found in the S106) might be harder to deliver under the less flexible Infrastructure Levy regime.

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]

26. The BPF are supportive of PDR being in scope of the Levy when the conversion is to residential development.

27. When a PDR is used to convert to a commercial use, we would argue that such a conversion should fall outside the scope in terms of attracting a levy charge. This is because having PDR conversions to commercial uses in scope could potentially disincentivise the reuse of existing buildings which would clearly be contrary to broader government policy in relation to decarbonisation of our building stock and construction processes.

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?

28. We received feedback from members that adopting nationally set maximum thresholds solely for permitted development schemes does not appear particularly well justified from DLUHC's own evidence base.

29. For example, the University of Liverpool research identifies a very narrow window within which Infrastructure Levy rates could be set for permitted development schemes however the same research suggests this is also the case for certain brownfield development schemes (particularly in medium value areas and apartments blocks).

30. Logically, if the government are proposing to set a national maximum rate to protect the viability of permitted development schemes, there may be a case for a similar approach to be adopted for other forms of constrained development too.

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]

31. As noted in response to Question 10, there is certainly a case for offsetting measures from the levy for certain forms of brownfield development. Qualification for any offsets will clearly depend on the different types of brownfield sites however this simply reinforces the points expressed earlier on in this response around the sheer complexity of setting rates in urban locations.

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.

(In response to Q12/13)

The complexity of using GDV to calculate levy liability for commercial forms of development

32. The BPF has significant concerns over the proposal to use GDV as the primary measure through which a developer's levy liability is calculated. Whilst such an approach works in theory for conventional housing for sale development, it is much more challenging to calculate an accurate final valuation for commercial and mixed-use development. The proposed approach builds a lot more complexity into the process in terms of calculating developer contributions for commercial and mixed-use development than the existing system.
33. It should also be noted that the new system will involve multiple GDV valuations, with potentially significant changes between valuation in both directions causing uncertainty for developers/funders as well as local authorities. Most of this kind of development requires no financial valuation currently through the planning process – it is not usually subject to viability assessment. The proposed approach will require three valuations which will create capacity and timing issues – particularly if there is a disputes/appeals process given that small variations in yields will have very significant impacts on GDV. If this is required before land charges are removed this could have significant impacts on funding and transactions. It also raises issues about how completion and/or occupation is defined for commercial development. If the final calculation is made on occupation, for a commercial building what level of occupancy will that be?

On Minimum thresholds/indexation

34. On the approach to minimum thresholds, we are of the view that these will need to be linked to inflation. It would be suboptimal to have the proposed minimum thresholds not linked to inflation but have the GDV figure linked to inflation.
35. There will also be build costs and the land threshold to consider. If that is 'fixed' at a point in time, then its real value will fall and therefore the 'notional' taxable amount will rise as a proportion. It will therefore be important for both build costs and 'EUV', particularly on brownfield sites with existing use to be indexed, otherwise the calculation will understate the development costs and hit development viability. This would, for example, have seen development costs rise by c. 15% over the last two years, whilst most commercial values have fallen, and residential values have started falling.

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]

36. Members fed back that the proposed interim payment (post commencement but prior to occupation) removes one of the few positives of the levy in terms of its design. The upside in theory of a new system (based on GDV) is payment would be much later in the overall development process meaning applicants would not be under as much pressure in terms of cash flow as payment would be taken at the end.
37. We also received feedback that more work will need to be undertaken by DLUHC on how charging and paying the levy will work for phased and commercial development in particular. In the commercial and mixed-use sphere, it is certainly much harder to define 'completion' than for conventional build for sale housing. It is common for different sections/uses within urban schemes to come forward at different stages. For example, the ground floor Class E uses may come forward before the residential/commercial uses in the upper floors commence and vice versa. On larger mixed use schemes the differences may be even more dramatic with years or even a decade passing between the first use and overall site completion.
38. For certain commercial uses, such as our industrial and logistics sector, the final adjusted payment (post complication) could prove particularly challenging. For example, it would presumably be the case that the payment would be due prior to the first occupier moving into one of the units. However, one of your first occupiers of the industrial units could be at the smaller end of the occupier market. In that scenario, you would have a small occupier triggering a very large payment (in terms of levy contributions). Such a scenario would be sub-optimal from a cash flow perspective for the developer/property owner. It would also indicate that there is scope for the Infrastructure Levy to affect the wider commercial decisions of real estate businesses as there will always naturally be a better time to pay from a cash flow perspective.
39. For members operating in our regional markets, a key concern was also the challenge around if there was not a crystallisation of development value at the end of the process. We also heard from members that registering the indicative liability (which may bear no resemblance the final levy liability in certain scenarios) as a land charge could create problems in the property lending market. It should be noted that the land charge serves as an important source of information for any party engaged in the property market and is relied on by prospective purchasers and lenders when making decisions about investing in property. As such, it is important that the figure is accurate.

Question 15: Is there an alternative payment mechanism that would be more suitable for the Infrastructure Levy? [Yes/No/Unsure]

40. Please see above our answer to question 14.

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? [Yes/No/Unsure]

41. Feedback in response to question 16 focused on making sure the public authorities have the resources to respond effectively regarding the discharge of the land charge. Given that in time, this will be a system that will apply to most forms of development, the extent to which public authorities will be able to respond in a timely manner regarding the administration of the land charge is a genuine concern for the property sector.
42. In the industrial and logistics sector, schemes can be built out within 9 months. It would be extremely concerning if under the new system property owners were waiting to hear back regarding the discharge of the land charge as the bureaucracy of the new levy would then be a factor in holding up occupation of commercial property.

Question 17: Will removal of the local land charge at the point the provisional Levy liability is paid prevent avoidance of Infrastructure Levy payments? [Strongly Agree/Agree/Neutral/Disagree/ Strongly Disagree/Unsure]

43. Unsure. We can of course recognise the concerns about potential avoidance however that would only be an issue in the event the final GDV was greater than the provisional payment that had been made. The proposed point at which the charge is to be removed seems to be an appropriate balance if a new procedure is to be required.

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]

44. In the absence of any ability for a developer to test the impact of the levy liability on the viability of the development in practice once rates have been set, we would be extremely nervous about introducing the ability for local authorities to request early payment into the system.
45. As not all local authorities would adopt the same approach to early payments, this could lead to further uncertainty and place additional pressures on developer cashflow in a system which has limited scope to deal with unexpected costs as it is.

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?

46. Please see above our answer to Q.18.

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/No/Unsure]

47. Members fed back that there will likely be a greater need for valuations of the proposed GDV of a scheme than is currently envisaged if the new proposed system is to work effectively. We received comments that government should require an actual valuation of the GDV of the scheme before the land charge is registered against a property to ensure that all the information about liabilities on the land charges registry is accurate and can be relied upon by third parties.
48. The property sector does have concerns that neither the private sector nor local authorities are prepared or have the sufficient resources to react to the significant increased demand for qualified valuation experts that the new system will require.
49. A targeted plan for training and recruiting more qualified valuers should be put in place across the private and public sector before the Infrastructure Levy is rolled out. Otherwise, it will be the case that the new proposed system of developer contributions will experience considerable delays owing to the lack of valuers in a similar way that the current system is delayed due to a lack of planning officers qualified to process S.106 agreements.

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]

50. As noted, the BPF are in principle supportive of local authorities being able to borrow to fund infrastructure. However, our members have some concerns because of the way the levy is designed there will likely be uncertainty over future levy receipts.
51. For example, the various review mechanisms over final levy amount builds uncertainty into the process as well as fluctuations in build costs which could mean the infrastructure costs more to deliver further down the line. This could undermine council decision makers' confidence in giving authorities the permission to borrow against the levy in practice which would in turn further undermine the delivery of infrastructure.

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]

52. Members strongly disagreed with this proposal to potentially use planning conditions as a mechanism for securing financial contributions. We heard from members that this is currently unlawful and would

require the unpicking of a significant and longstanding principle of planning law – that planning conditions cannot be used to secure financial payments.

53. Under the existing system, the securing of financial contributions can only be achieved lawfully through S106 agreements. If this approach is to be pursued, it therefore makes more sense to do this through the mechanism of the S106/delivery agreement.

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]

54. As noted in our general comments section, we would recommend that government retain and seek to improve the existing developer contributions system. Through reforming S106 and CIL, there are certainly opportunities to create a more efficient system that delivers infrastructure in a timely fashion than an entirely new system of developer contributions through the new proposed levy.

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]

55. Regarding the implementation of the Infrastructure Delivery Strategy, the most crucial factor to it succeeding will be elevating it to the same status as collecting the levy. The Infrastructure Delivery Strategy will need to be a dynamic document seen by local authority officials and councillors as more important than the levy itself in some ways as this is the mechanism which will ensure infrastructure is actually delivered.
56. DLUHC will have to also give some thought to the appropriate checks and balances in the system for when particular local authorities fall short in terms of the implementation of the Infrastructure Delivery Strategy. The examples of certain local authorities sitting on millions of pounds of CIL money are well documented in the industry press. In some cases, the need will be genuine in that the local authority will be waiting to deliver a big piece of strategic infrastructure however that is certainly not the case for all the examples with certain local authorities lacking proactivity in spending their developer contributions receipts. Lessons should naturally be learnt from this challenge of the existing system as it will be relevant for the successful implementation of the Infrastructure Delivery Strategy and wider levy.

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

57. To be most effective, the Infrastructure Delivery Strategy would need to be prepared alongside a local authorities' local plan given the evidence bases will be very similar.

58. It is difficult to see how the local plan process and the preparation of the Infrastructure Delivery Strategy cannot be tackled jointly. A local authorities' forward plan for infrastructure will naturally be heavily reliant on the type, scale of growth and site allocations set out in the relevant local plan on both a local and regional basis.

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]

59. As set out in response to question 25, given how closely aligned both the Infrastructure Delivery Strategy and the relevant local plan will need to be for effective policy making, the two documents will need to be prepared together. Should this approach occur, then views on the Infrastructure Delivery Strategy could be sought during the local plan consultation process. This would also remove the need for a separate public consultation exercise.

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

60. We agree with the list of information proposed in Question 27. It would also be useful for the Infrastructure Delivery Strategy to include indicative timescales for delivery of key strategic infrastructure that is needed to secure the delivery of major applications within the local plan (for example new train stations or major highways projects).

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

61. All of the proposed tools and mechanisms listed above are likely to assist. Members did feed back that many of the problems that county councils are experiencing with accessing CIL funding may be of relevance to DLUHC policymaking in this sphere. These challenges include:

- Disagreements over infrastructure funding priorities within different local planning authorities – particularly over strategic infrastructure funding that may be cross-boundary.
- The sheer complexity of the multiple allocation procedures that need to be navigated to access CIL receipts.

62. The introduction of a more standardised allocation procedure across all two-tier authorities in combination with a specific disputes resolution process to resolve disagreements over funding priorities would therefore be welcome.

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]

63. Whilst a local plan can never anticipate all likely infrastructure requirements arising during a local plan period, it is still the best opportunity available for effective forward planning of infrastructure requirements.

Chapter 5 – Delivering affordable housing

64. The infrastructure levy cannot deliver the Government's objectives set for it. There are conflicts in its design that cannot be resolved. The primary one of these is a trade-off between simplicity and optimisation of what is raised. A simple levy must be set on the low side to take account of the different development economics of a multitude of different development scenarios on different sites. Current arrangements with S106 affordable housing requirements are sensitive to individual sites, and therefore are more likely to deliver greater amounts of affordable housing. The Government therefore cannot guarantee the infrastructure levy will deliver more affordable housing.

Affordable student accommodation

65. In the Purpose Built-Student Accommodation sector London Plan policy is for developers to make contributions towards 'affordable student accommodation'. This model is also being considered in other university cities. Such affordable accommodation is not recognised in the annex to the NPPF, but is preferred to affordable housing contributions, which in the sector it makes no sense to deliver on site. There is also a circularity about PBSA providing affordable student accommodation in London, rather than contributing towards more general affordable housing.

66. Our understanding is that it is not the intention that the Infrastructure Levy should conflict with existing planning policy. It is extremely difficult to see how the London Plan policy works with the levy. For example, levy rates will need to be set to reflect that the Purpose Built-Student Accommodation sector

is contributing to affordable student accommodation and should not lead to a situation where double-counting occurs, because the sector is also making a full contribution via the levy to affordable housing provision.

67. In a world without s106, it is also difficult to see what mechanism will be used to deliver 'affordable student accommodation'.
68. We would urge the Government clarifies its approach as a matter of urgency, given that early consultation is taking place on the next London Plan.

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

69. Neutral - This section of the consultation starts with the false premise that viability discussions have no substance, and simply drive down affordable housing contributions to maximise developer profits – that is incorrect. What might have been a policy-compliant level of affordable housing at the time of plan-making may no longer be deliverable, because of a change in circumstances. The current system flexes to ensure that developments remain viable. With what is being proposed with the Infrastructure Levy, only the local authority will have the power to negotiate, meaning some schemes will be left undeliverable.
70. We agree that it will reduce the risk that affordable housing negotiations are negotiated down, but what good is that if the overall number of homes actually delivered is considerably reduced because development cannot come forward?
71. The rigidity in what is being proposed is also concerning in two further respects. At present, each site can flex to a preferred mix of affordable housing to accommodate local circumstances. However, by committing to a tenure mix in the Infrastructure Delivery Strategy, the local authority is bound by that mix, regardless of whether that is appropriate for specific development scheme. If the developer can meet the policy-required tenure mix, the local authority will have no grounds to negotiate something different.
72. A further flexibility in the current system which is often welcomed is the mix between on-site and funding for off-site affordable housing. Again, the local authority will have the power to renegotiate this. However, if the developer meets the policy, then presumably the local authority cannot negotiate something different.
73. Perhaps our most fundamental concern, however, is the balance between the Right to Require and the overall levy funds raised. Prioritising on-site affordable housing via the Right to Require, might leave little for other mitigating infrastructure provision – schools, healthcare, etc, which is often what makes places liveable, and secures the support of the existing community.

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]

74. Neutral - We welcome the consultation paper rehearsing the various issues where the 'discount' may add up to more than the levy liability on the market housing in a cross-subsidy model. Whilst the approach seems sensible, it does change the status quo, with market housing delivered by registered providers currently required to pay CIL. Our concern would be that in such circumstances the local authority is getting no contributions from the market housing towards other off-site infrastructure, and so the impact on the wider community is not mitigated. We can offer no solutions such is the design of the Infrastructure Levy, but it exposes another quirk of this new system. It also raises a question what is a high percentage?

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

75. We are not best placed to answer this question.

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].

76. As per the last paragraph in our response to question 30, we are concerned about the balance that some local authorities will strike between affordable housing provision, and other necessary infrastructure, that makes places work. It is not appropriate to take a "one size fits all" approach which is why the s.106 system is so effective. There are some grounds for therefore capping the maximum percentage, as the consultation paper explores. As the consultation also explores, however, a cap may not work in places like rural areas, where it may make sense to maximise affordable housing, with little need for other infrastructure.

77. What developer contributions are spent on, has also changed significantly in the relatively short period of a decade from a position of approx. 50:50 affordable housing/other infrastructure, to a ratio that now resembles 67:33, reflecting that Government spending on affordable housing has been cut. What is therefore set in plan-making may need to be changed during the plan period depending on other Government policy decisions, such as funding for affordable housing.

78. We agree a cap is problematic. Our suggestion would be to have some sort of Secretary of State power, where the Right to Require is more than 67%. The local authority could explain why it is setting a Right to Require rate of over 67%, and the Secretary of State could intervene if it was felt it was inappropriate.

Chapter 6 – Other areas

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

79. We are broadly supportive.

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.

80. We are unsure. Whilst we can understand the desire to retain the Neighbourhood Share, care needs to be taken to avoid diverting necessary Infrastructure Levy funding away from more strategic infrastructure requirements.

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?

81. No specific comments.

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.

82. C. Given that the Infrastructure Levy receipts will likely be considerably higher than levels currently received through CIL, a 5% administrative portion seems disproportionate to the work required to operate the system.

83. It should be noted that there is a lot of uncertainty around how much administrative work will be required to run the new system so understanding this aspect will be a key theme to explore for the test and learn exercise.

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; [Strongly Agree/Agree/ Neutral/Disagree/Strongly Disagree]
- self-build housing; [Strongly Agree/Agree/Neutral/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.

84. No specific comments.

Question 40: To what extent do you agree with our proposed approach to small sites? [Strongly Agree/Agree/Neutral/Disagree/Strongly Disagree/Unsure]

85. Providing a discounted rate for smaller sites and removing the right to require could well assist SMEs in bringing these sites forward, if the threshold of what constitutes a 'small site' is set at an appropriate level.

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

86. No specific comments.

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

87. As a general rule, any development which is to be funded, in whole or in part, through levy receipts should be exempt from the Levy through regulations – otherwise, you would simply be reducing the amount of levy receipts available to deliver infrastructure.

Question 43: Do you agree that these enforcement mechanisms will be sufficient to secure Levy payments? [Strongly Agree/Agree/Neutral/Disagree/Strongly Disagree/Unsure]

88. In order to work in practice, the Infrastructure Levy is going to need to be a collaborative process, with developers and local authorities working together to effectively value schemes and ensure that the process can be run efficiently.

89. The proposed enforcement mechanisms in the consultation paper do not appear to have been designed to promote the kind of collaboration that will be necessary if it is to operate successfully.

90. As noted above, the current design of the levy as a % of GDV above a minimum threshold does not currently allow any mechanism for addressing rapid cost inflation, the discovery of abnormalities on site,

or the erosion of the minimum threshold over time (due to differences in inflation rates or the time lag between uprating).

91. In addition, where a site is marginal – there is a real risk that imposing a stop notice or placing limits on occupation prior to payment could well force developer insolvencies which simply result in the levy not being paid at all or being paid at a lower rate than would otherwise have been the case.

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]

92. The 'test and learn' approach to smooth the transition to the new proposed system is very welcome and reflects the consensus (among industry and government decision-makers) that shifting to an entirely new system of developer contributions is difficult and thus we should proceed cautiously.
93. In terms of gathering evidence from the areas where the levy will be initially tested, it will be important that a good variety of areas are selected (in terms of economic geography, rural vs urban etc).
94. Members also fed back that perhaps one feature of the 'test and learn' approach could be to run both the existing and new system concurrently in a particular area (either local authority wide or on a scheme-by-scheme basis). Such an approach would provide real life comparisons between the system in practice. Of particular interest for any pilot like this would be testing the extent to which more is raised under the new levy in practice.
95. Resourcing and skills of local authorities will also have to be a key focus for the test and learn programme. The new infrastructure levy will be massively expanding the responsibilities of local authorities in relation to the administration of developer contributions. Making sure the necessary skills are in place across authorities will naturally be a key determinant of the success of any future system. If the new system operates without the skills and expertise needed to support it, there is a significant risk that the levy will slow down and hinder development.

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].

96. No specific comments.