

London Forum response to Infrastructure Levy consultation

General Comments

The London Forum is not persuaded that the arrangements for the proposed Infrastructure Levy will achieve better outcomes in London for either necessary infrastructure provision or for much needed affordable housing. Much of the argument for the proposed Levy seems to be based on the premise that there is scope for a higher level of land value capture across the country than is currently achieved via the existing Community Infrastructure Levy (CIL) and Section 106 arrangements. This may be the case in certain parts of the country where there is a coincidence of high land values and poor performance by local authorities by setting either a limited or no CIL and failing to properly negotiate appropriate levels of affordable housing and infrastructure provision via Section 106. However in London, the great majority, if not all, local planning authorities have great experience of setting appropriate CIL rates and negotiating strongly on Section 106 agreements. The complexity of the new regime now proposed can carry no guarantee that it will provide more affordable housing than at present, and some risk that it will provide less. Furthermore it will be essential that there is no delay in delivering affordable housing and social infrastructure caused by any delay in receiving IL funds by having to wait for the establishment of the final GDV. There must be the opportunity for phased delivery of infrastructure with the sort of large developments likely to be delivered in London's Opportunity Areas.

The proposed Infrastructure Levy (IL) involves a much more complex process than CIL (there have been estimates that more than 36 rates would have to be justified and set within each Borough with consequential increased costs and resource requirements for local authorities), it may result in otherwise acceptable planning applications being refused because their impacts on infrastructure and other matters cannot be mitigated because of the scrapping of Section 106 and it is also unlikely, outside greenfield development sites in areas of high value (most of which in London will be either Green Belt or Metropolitan Open Land and therefore NOT available for development) to generate any greater value than the existing system of CIL and Section 106.

It is the Forum's view that it would be more advisable for the Government to focus its attention on improvements to the existing CIL and S106 system which could include the following:

- A. Requiring all local planning authorities to set a CIL within a given time period unless detailed analysis shows setting a CIL would render development unviable
- B. Requiring all local planning authorities to prepare an Infrastructure Delivery Strategy in connection with their CIL with a matching requirement that all infrastructure funders and providers should have a duty to co-operate in the production of such a strategy.
- C. Where S106 agreements are used, enabling local planning authorities to include provisions for additional payments to be made by developers where sales values exceed those set out in initial agreed viability assessments.

Responses to specific questions

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:

- a. 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
- b. Buildings which people do not normally go into - Yes/No/Unsure
- c. Buildings into which peoples go only intermittently for the purpose of inspecting or maintaining fixed plant or machinery - Yes/No/Unsure
- d. Structures which are not buildings, such as pylons and wind turbines.

Q1. Yes to a, b, c, and d.

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

Q2. Yes. It is essential that the ability to provide properly planned integrated development with appropriate embedded infrastructure is not prejudiced by the design and operation of the Infrastructure Levy (IL). And we are not confident that all of the elements required for integrated infrastructure could be delivered by planning conditions. Hence the scope for 'delivery agreements' akin to S106 agreements will be essential.

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

Q3. Option C. Of the three options set out, option C is the most preferable as it allows local authorities to use local knowledge and discretion as part of their demonstrably accountable local peacemaking role. But the development and implementation of the infrastructure delivery strategies in which the necessary principles and typologies will be embedded will be a complex task which will need to be piloted carefully over a number of years.

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?

Q4. No. To allow local authorities to use IL funding on service provision risks losing the additionality of funding which IL provides. There may be cases where revenue funding is required to ensure that bus services are enabled or new training initiatives are facilitated but these should continue to be provided through S106 legal agreements.

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?

Q5. Yes.

Where local service provision requires revenue funding in association with new development it should

be provided via S106 legal agreements.

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

Q6. Unsure. If the operation and flexibility of S106 is to be cut back, it is essential that these operational flexibilities are reprovided in some other effective way.

Question 7: Do you have a favoured approach for setting the 'infrastructure in-kind' threshold?

Q7. Local authority discretion. It is very difficult to set a national threshold when the nature of local authorities varies so much. 500 residential units may be an appropriate threshold in the biggest of local authorities but would not be appropriate in smaller authorities where a 50 unit scheme may include embedded infrastructure. But we have some reservations about the detail on specific sites that will be required in local plans in order to make the infrastructure in kind routeway practical and effective.

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?

Q8. S106 has proved to be an effective flexible way of securing necessary benefits and mitigation for development. Its continuing role should be maximised rather than minimised.

Question 9: Do you agree that the Levy should capture value uplift associated with permitted development rights that create new dwellings?

Q9. Yes and Yes. The levy should apply to all forms of permitted development that create new dwellings. The levy should not apply to forms of permitted development that comprise small extensions to existing dwellings.

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 [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

Q12. Unsure about charging the levy on final sale GDV of a scheme. We have reservations about the capacity and capabilities within LPAs and the costs of securing appropriate professional advice to engage effectively with developers in the proposed system, especially with the three-step process for charging the levy.

Agree about the use of different levy rates and minimum thresholds on different development uses and typologies. But need to recognise the complexity this brings to the system. Some developments may involve different rates and thresholds for different parts of the development.

Strongly agree about ability for local authorities to set 'stepped' levy rates.

Agree about separate levy rates for thresholds for existing floorspace that is subject to change of use and floorspace that is demolished and replaced.

Question 13: Please provide a free text response to explain your answers.

Q13. It is not at all clear that agreement will easily be reached on what the final sale GDV of a scheme is. Even where a 'simple' metric like the sale price of a newly completed house is used, this can conceal all sorts of sales incentives that are used to secure a sale. Local authorities are best placed with access to appropriate professional advice to set stepped levy rates, thresholds etc with the proviso that this should be subject to examination through a process similar to that currently undertaken with the Community Infrastructure Levy.

Question 14: Do you agree that the process outlined in Table 3 is an effective way of calculating and paying the levy?

Q14. Unsure. The significant number of calculations required to determine how much IL should be paid for an individual scheme highlight the undesirability of introducing the IL.

Question 15: Is there an alternative payment mechanism that would be more suitable for the Infrastructure Levy?

Q15. Yes. A payment mechanism which combines a floorspace based levy plus a top up based on audited sales values for residential schemes. Examples of such schemes include the Milton Keynes Tariff and the London Thames Gateway Development Corporation Planning Contributions Strategy.

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?

Q18. Strongly Agree. If an objective of the IL is to provide infrastructure at an early stage then the earlier the payment is received the better.

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?

Q19. Yes where infrastructure is required early and the costs and risks of borrowing against an anticipated levy contribution are too high. There have been a number of recent examples where local authorities have borrowed inadvisedly against property 'assets'.

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.

Q20. Unsure but the processes set out in Chapter 3 of the consultation highlight the added complexity of the proposals as compared with the current system.

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?

Q21. Disagree. The timely delivery of infrastructure depends on a whole range of factors which are independent of the operation of the IL. The partial funding of infrastructure that the IL provides

whether or not via borrowing against future flows of IL will not make a significant difference where many other sources of funding through main spending programmes of government bodies and non governmental agencies are required. These programmes all have their own conditions of regulatory approval and management oversight.

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?

Q22. Neutral. It's not at all clear how this proposal would resolve anything. Such a condition placed on a planning permission could be appealed to a planning inquiry where much of the dispute would be likely to be about financial viability. Such matters would at the moment be addressed via a S106 planning obligation.

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?

Q23. Unsure. This question misses the point. The existence of a levy which can partially fund the provision of a wide range of infrastructure and affordable housing does not have a significant impact on the timely delivery of infrastructure. Timeliness depends on all relevant funding being available and all regulatory processes having been complied with and all necessary land being available together with a responsible body being properly set up to build and operate the infrastructure or affordable housing. Section 106 agreements with their legal enforceability and precision and the Community Infrastructure Levy with its floorspace levy together with a development land tax to capture land value uplift should be considered as an alternative to the Infrastructure 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?

Q24 Agree but certainty will only be achieved when all funds are available and all regulatory processes properly complied with.

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

Q25. A full scale growth and infrastructure study is required which has to be backed and supported by all relevant infrastructure providers.

Question 26: Do you agree that views of the local community should be integrated into the drafting of an Infrastructure Delivery Strategy?

Q26. Yes. But there needs to be a recognition that strategic infrastructure such as rail and road improvements and water and reservoir infrastructure cannot be subject to a local veto.

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**

Q27. All of the above plus timetables.

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**

Q28. Implementation of statutory timescales for infrastructure providers to respond to local authority requests.

Question 29: To what extent do you agree that it is possible to identify infrastructure requirements at the local plan stage?

Q29 Agree provided infrastructure providers respond in a timely fashion to local authority requests.

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?

Q30. Unsure. The reasons why affordable housing contributions are 'negotiated down', if and when they are, on 'viability grounds' will remain, whether the right to require exists or not. Instead of affordable housing being negotiated down it may well be that infrastructure contributions are 'negotiated down' perhaps to a level that planning permission cannot be granted. If the main objective of the IL is to capture increased in the value of development land then a transparent development land tax should be introduced.

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?

Q31 Unsure. It is not clear what is meant by a 'highly discounted' IL rate. Affordable housing, as much as or more than private housing, makes demands on infrastructure. It may be particularly suited to the provision of on site infrastructure such as schools as part of an integrated development. Local authorities should have appropriate discretion and access to funding to secure the best way to provide the necessary infrastructure to support new developments of affordable housing.

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?

Q33. No and Yes.

Question 34: Are you content that the Neighbourhood Share should be retained under the Infrastructure Levy?

Q34. Yes

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 such areas?

Q36 Consideration could be given to whether properly constituted Neighbourhood Forums which have secured the adoption of a Neighbourhood Plan which includes proposals for specific items of local infrastructure should have access to and control over the IL funds required to deliver those items of infrastructure subject to appropriate legal and financial oversight.

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

Q37. Unsure but, given the extra administrative burdens that will be involved in the IL, consideration should be given to allowing an increase to be tested in the pilots.

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

Q40. Neutral. If small sites are to be exempted from IL then there needs to remain the ability for local authorities to negotiate tailored S106 agreements to cover infrastructure and affordable housing requirements as appropriate.

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?

Q44 Unsure but given the complexity of the proposed system, phased piloting will be essential.

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?

Q45. No