

Technical Consultation on the Infrastructure Levy

**Department of Levelling-up, Housing and
Communities**

June 2023



Introduction and Executive Summary

Please find below the response of the Land Promoters and Developers Federation (LPDF) to the government's 'Technical Consultation on the Infrastructure Levy' – March 2023.

The LPDF represents land promoters and housebuilders, of all sizes, who due to their land interests interact with the planning system across England to establish the principle of development, normally for a residential use. As a consequence of these multiple daily interactions with Local Planning Authorities (LPAs) and consultees throughout the country, we are uniquely placed to comment on the operation of both the plan making and decision taking components of our planning system. It has been estimated that the land promotion sector is responsible for over half of the outline planning consents for residential development on an annual basis.

General Overview

The planning and development sectors are resilient ones and have shown a willingness over time to both adapt to changing market and economic circumstances, and to work collaboratively as a 'critical friend' with all governments.

The LPDF are sympathetic to the government's efforts to both optimise and streamline developer contributions through the planning system, but we also see the ability to draw a direct link between new development and the benefits it can bring for existing and future residents as critical to fostering more positive attitudes towards change in the built environment.

Having now considered the proposals contained in the consultation in further detail, we would like to caution against such a major overhaul of the current arrangements for developer contributions.

The existing system

The consultation material states that the "government wants to make sure that local authorities (LAs) receive a fairer contribution of the money that typically accrues to landowners and developers".

Whilst not being perfect, it is extremely important to recognise the benefits that current forms of land value capture are securing. Savills¹ estimate that around 50% of land value uplift is captured via developer contributions, once the costs of site remediation and enabling works are taken into account. This is before a landowner even pays tax on any subsequent land transaction.

As the consultation material notes, developer contributions in 2018/19 were estimated to be worth around £7 billion. It is respectfully suggested that the issue, nationally, is less that what is being collected is sub-optimal, and more that how it is collected and spent is sub-optimal. If the government wishes to see improvements to the current system, they should assist LAs to spend the monies they have collected, and will collect through the developer contribution system, effectively and efficiently.

The consultation material states that the proposed levy "will support funding for the infrastructure (affordable housing, schools, GP surgeries, green spaces and transport infrastructure) to support connectivity that local communities expect to come with new development, but there is evidence in places like Gloucestershire for example, that the CIL being collected by district councils is not being passed to the county for investment in such facilities.

¹ [Savills UK | How far can land value capture be pushed?](#)

Whilst there are provisions in legislation preventing CIL from being spent on anything other than infrastructure, there are no mechanisms for ensuring that revenue raised through CIL is transferred to county councils, or that any of the revenue raised through CIL is actually spent at all.

CIL, for all its benefits, broke a direct link between the delivery of a particular development and the delivery of infrastructure, prioritising as it does the raising of revenue over ensuring actual delivery. The IL would exacerbate this issue at a time when, as stated above, it is more important than ever to be able to demonstrate the benefits to existing communities that new development can bring.

It is understood that as of April 2023, there are 158 CIL charging authorities (down from 163 due to local government reorganisation), which represents only 51% of LPAs with a CIL in place.

The fundamental issue with CIL is that it is not mandatory because were it so, then more of the gremlins associated with it would have been ironed out by now and the skills required to promote and adopt one would be more prevalent.

The consultation material states the proposed levy will “largely sweeping away the sometimes protracted negotiation of Section 106 Agreements”.

It is absolutely the case that some negotiations can be protracted because of their complex, strategic nature, but, as was stated in a 2020 report on ‘The Incidence, Value and Delivery of Planning Obligations and Community Infrastructure Levy in England in 2018-19’², a distinction can be drawn between unavoidable delays and avoidable delays.

The negotiation of the agreement, an unavoidable delay, could be expedited by expanding the scope of planning performance agreements to involve statutory consultees all the way through the process and to make the scope of, drafting of, and execution of an agreement, key milestones within the project timeline.

Avoidable delays could be reduced by, for example, reducing reliance on locum solicitors that start each agreement from scratch by adding greater internal LA resources and the wider use of standard template agreements.

Other issues like the opaqueness and uncertainty of how and when funds are collated and spent and by whom, could also be readily dealt with by accessible policies and effective monitoring and reporting arrangements.

It was reported in April 2023, for example, that West Northamptonshire “does not have an overall picture of developer contributions worth millions of pounds and communities could be missing out”.

Perhaps the issue, locally, is again less that what is being collected is sub-optimal, and more that how it is collected and spent is sub-optimal.

The proposed system

In relation to the IL itself, it is stated that the government is committed to the levy “securing at least as much affordable housing as developer contributions do now”.

In an NHF letter to the government, it was highlighted that almost 50% of all new affordable housing is funded through Section 106 Agreements and that under the IL as proposed, it is possible that

² [Section 106 planning obligations and the Community Infrastructure Levy in England, 2018 to 2019: report of study \(publishing.service.gov.uk\)](https://publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/115555/section-106-planning-obligations-and-the-community-infrastructure-levy-in-england-2018-to-2019-report-of-study.pdf)

developer contributions could be diverted away from delivering affordable housing to other unspecified forms of infrastructure or LA spending priorities.

Notwithstanding the scale of affordable housing delivery, it has not in principle, been part of the CIL regime because, in the interests of creating mixed and balanced communities, it has been considered better realised by being integrated as part of a development rather than by contribution. The IL would deviate from this important placemaking principle.

A further justification for the proposed levy is that it will provide additional funds to local communities. The consultation material concludes however, that the proposed levy is best suited to uncomplicated greenfield sites in higher value settings and that in other contexts, particularly brownfield developments, LAs would be offered far less flexibility in the identification of a rate that would maintain development viability.

The consultation further notes that according to research conducted in 2020, 53% of funds raised by CIL are raised and spent in London compared to just 3% in the North East. The proposed levy might therefore, capture more value from greenfield sites in the South East, but as the accompanying report notes, “it is likely that a shift to the IL would reinforce the geographic inequalities already evident in the current system”. This is hardly in the spirit of Levelling-up.

The present system includes relatively high thresholds for developer contributions, with relatively high level testing at the plan-making stage and an acknowledgement that those thresholds may or may not be met subject to more detailed viability assessment once a planning application has been submitted. It is expected however, that every site will deliver an optimum, policy-compliant contribution.

Any fixed system of contribution must be set at a low enough level to avoid any scheme being rendered unviable. On the basis that some schemes could have delivered more than that required by a low threshold, but would no longer be doing so, it is difficult to envisage how funds additional to levels collected presently could be secured.

An additional justification for the proposed levy is that it will be a more efficient system, but securing agreement to the inputs to rate-setting during an examination will be extremely challenging (and would represent a significant additional resource burden on already overstretched planning departments).

Setting a CIL rate of what is typically a few hundred pounds is complicated and contentious already, but the complications and contentiousness would be shown to be modest compared to what would be needed if the rates stretched into thousands of pounds to support both infrastructure and affordable housing requirements.

Further, CIL is typically only collated by way of a handful of charging rates. The proposed levy would require a multi-dimensional triangulation of charging rates to account for different uses of different scales (e.g. building heights) in different parts of an authority with different existing use values and different costs and revenues. On that basis, it does not seem outlandish to imagine that the number of rates required could run into the dozens.

Governments are often criticised for taking a short-termist approach to policy formulation and so, by extension, anybody who does should be open to something of this long-term, potentially transformative nature. The IL could have considerable merit, but it is also legitimate to ask whether the perceived deficiencies with the present Section 106 Agreement and CIL regimes are not actually dwarfed by the vast operational, structural and procedural challenges that the IL would introduce,

and whether the time, cost and effort required to pursue the latter would not be better directed to remedying the former.

The CIL review group recommended that CIL and Section 106 Agreements be replaced by a Local Infrastructure Tariff, with a Strategic Infrastructure Tariff operating a combined authority level. If reform in the way that infrastructure is funded is to be pursued, then this could be a more desirable avenue to pursue.

If, however, reform in the way that land value uplift is captured is to be pursued then some kind of a greenfield land windfall tax might be simpler and have the same effect. A system for developer contributions can either be simple or it can optimise delivery, but it can never satisfy both. The undersigned humbly and respectfully suggest that the proposed IL will do neither.

Detailed Responses to the Consultation Question

Q1. 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);**
- **Buildings which people do not normally go into;**
- **Buildings into which peoples go only intermittently for the purpose of inspecting or maintaining fixed plant or machinery;**
- **Structures which are not buildings, such as pylons and wind turbines.**

Yes. If the government wants to ensure that a wider number of development categories contribute through the new IL, then ensuring that a wider definition of development that would be subject to IL will be necessary. However, in order to ensure that certain developments are still delivered without affecting their viability, exclusions will be necessary. It is considered that keeping the current definition of development and list of exemptions would therefore be appropriate.

Q2. 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 – This is essential to ensure that infrastructure that is necessary to be delivered on site for the benefit of existing and new residents, and which is required to make the scheme acceptable and policy compliant, needs to be delivered by the developer(s) of the site so that it can be incorporated into the delivery scheme and the developer can ensure that it is delivered when it is needed. The LPDF would be significantly concerned about any proposal making LAs responsible for infrastructure provision as they do not have the skills or resources available to deliver this effectively.

Q3. What should be the approach for setting the distinction between ‘integral’ and ‘Levy-funded’ infrastructure?

This will be a difficult distinction to categorise so that it is applicable to all situations. As the consultation states, some on-site infrastructure may provide a wider benefit to the community and may not be necessary simply to provide for the needs of the site itself (e.g. a new school or GP surgery). In other circumstances, the provision of a facility that is intended to serve the proposed site may need to be delivered off-site. Therefore, there needs to be flexibility in the definition of

‘integral’ and ‘levy funded infrastructure’ to ensure that issues do not occur on an individual site basis.

However, the regulations have to ensure that developers are aware, from the Infrastructure Delivery Strategy, which elements of infrastructure the developer is expected to deliver on-site and which will be delivered by way of ‘levy funded infrastructure’ to allow them to take into account the costs associated with infrastructure delivery at an early stage of the development process, and to ensure that ‘double dipping’ does not occur.

Q4. Do you agree that local authorities should have the flexibility to use some of their Levy funding for non-infrastructure items such as service provision?

No. There should be a clear link between the delivery of the site and the infrastructure that is to be delivered to support that site. As set out in the general overview above, it is more important than ever to be able to demonstrate the benefits to existing communities that new development can bring and diverting IL funding into service provision, which may not be linked to the development itself, is likely to lead to less transparency as to where the funds were spent and why.

There are issues caused by the present system with some County Councils being unable to access the funding from district authorities which have been secured through S106 Agreements and CIL payments. These situations are only likely to be exacerbated if LAs are allowed to spend IL on non-infrastructure items. Additionally, with the recent consultation on the potential to increase planning application fees, there is scope to ensure improved LA funding for service provision from this source, without detracting from infrastructure being delivered by the Infrastructure Levy.

Q5. 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? Should expectations be set through regulations or policy?

Yes – However, as we set out in response to **Q4** above, the LPDF do not consider that LAs should have the flexibility to use some of the IL funding on service provision. However, if the government choose to allow the funding of services through the IL, then it is essential that LAs prioritise affordable housing and infrastructure provision ahead of any spend on service provision. If this is not mandated, then there is a concern that LAs will plug holes in their budgets for service provision with IL funds which will reduce the funding available for much needed affordable housing and other infrastructure.

Q6. Are there other non-infrastructure items not mentioned in this document that this element of the Levy funds could be spent on?

No.

Q7. Do you have a favoured approach for setting the ‘infrastructure in-kind’ threshold?

Low Threshold – The LPDF consider that a low threshold is more likely to streamline the process, but there needs to be some element of LA discretion on this issue. The LPDF do not think that the core levy routeway is appropriate for many of the major sites that will be allocated in local plans and which have significant on-site infrastructure requirements. This infrastructure will be best delivered by the developers.

Q8. 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?

Yes. One of the key objectives of the new IL system is to deliver a simplification of the current S106/CIL system that is operation currently. Originally, it was considered that S106 Agreements should be replaced by a simple levy based system that would collect at least as much funding as the present system.

However, the government has now determined that the provision of infrastructure which is 'integral' to the delivery of the site itself and which cannot be secured via planning condition, needs to be secured by way of the newly named, 'delivery agreement'.

The LPDF consider that 'delivery agreements' are simply renamed S106 Agreements and that the matters which they are likely to need to cover will still be extensive and complex including such matters as First Homes, BNG, SANG, nutrient and water neutrality mitigation, public open space, SUDS etc. This means that all of the issues which are caused by the current S106 Agreement system, are likely to continue in the new IL system where 'delivery agreements' are required. Delays in the preparation of 'delivery agreements' caused by lack of resources in the planning system, legal sector and other key stakeholders that are required to interact with the legal agreement process, will all still remain.

Q9. Do you agree that the Levy should capture value uplift associated with permitted development rights that create new dwellings? Are there some types of permitted development where no Levy should be charged?

Yes. However, the levy should not be charged on Permitted Development Rights where no dwelling is created.

Q10. 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?

The LPDF have no response to this question.

Q11. 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. In urban areas, attempting to set a percentage of GDV that will operate as a fixed levy that would not render developments unviable is extremely complex. There is almost an infinite number of scenarios which could be taken into account due to differences in key appraisal inputs which include sales values, build costs, benchmark land values, existing use values, profit margins etc.

The outcome of the inter-relationship between these factors will be that it is almost impossible to set an IL rate which would not exceed the viable level of many sites and result in a significant number of sites paying less IL than they could viably deliver.

In short, it is highly unlikely under the proposed system that brownfield sites will deliver any IL funds due to viability issues.

Q12 & Q13 The government wants the Infrastructure Levy to collect more than the existing system, whilst minimising the impact on viability. How strongly do you agree that the following components of Levy design will help achieve these aims?

- **Charging the Levy on final sale GDV of a scheme.**
- **The use of different Levy rates and minimum thresholds on different development uses and typologies.**
- **Ability for local authorities to set 'stepped' Levy rates.**
- **Separate Levy rates for thresholds for existing floorspace that is subject to change of use, and floorspace that is demolished and replaced.**

Whilst the government's ambition is for the new IL to collect more funding than the existing system, it is unlikely that the system proposed will achieve this aim. The current system of S106 Agreements is designed to extract the maximum value from a scheme through a process of negotiation and valuation. Schemes are required to be compliant with local plan policy and to mitigate their impacts on the local area through infrastructure and service provision. If the valuation of a scheme shows it to be viable, then the scheme and its associated infrastructure will be delivered, or at least funded.

If the proposed IL is introduced, it will act as a fixed charge across a number of different scenarios. In order for LPAs to ensure that the IL rate that is charged does not impact the viability of schemes, it will have to be set at a level that allows those schemes with limited viability to remain viable. This will mean that there is the potential for value to be left on the table which is contrary to the current system.

Charging the Levy on GDV – Charging the levy on final GDV introduces a significant element of uncertainty to the development process that both LAs and developers will find difficult to estimate when they are forward planning their schemes, undertaking land transactions, and planning infrastructure delivery. This approach will also cause issues with such developments as student accommodation, PRS, and commercial schemes which are not sold at the end of the development period, as a true valuation will be hard to ascertain. The process is also likely to lead to significant disagreements about the final GDV of the scheme and a consequential need for conflict negotiation at the final valuation stage through some form of appeals process. Instead of achieving the government's aim of shortening the negotiation process and reducing the complexity in the system, the proposed system is likely to work counter to these objectives.

The use of different Levy rates and minimum thresholds on different development uses and typologies – The LPDF strongly support the need to set a wide variety of different levy rates and thresholds across a LA area. In order to ensure that the maximum level of contributions can be extracted from a site without impacting on viability, the use of levy rates, minimum thresholds and development typologies will need to be comprehensive and potentially complex. The LA will need to consider a wide variety of development typologies, in different locations throughout their area (dependent upon variations in land value across their patch), for both greenfield and brownfield development and set both a levy threshold and a levy rate for each. Given the variation in potential options which will need to be considered in setting the IL within a LA, the resultant levy schedule is likely to be extremely complex. Given that any IL charging schedule will need to be examined before it is adopted, the complexity of the final levy will lead to long drawn out examination processes as each of the thresholds and rates set for each of the typologies is forensically challenged, especially

as levy rates are likely to be significantly higher than the corresponding rates under CIL now that affordable housing has been brought within the IL regime.

Ability for LAs to set stepped rates – Whilst this approach may assist the transition period between the two developer contribution systems, the setting of stepped levy rates is not supported as they are likely to provide perverse incentives for developers to get sites through the system before the levy rates rise.

Separate Levy rates for thresholds for existing floorspace that is subject to change of use, and floorspace that is demolished and replaced – This proposal is supported but is another example of additional complexity being introduced to the new system.

Q14. Do you agree that the process outlined in Table 3 is an effective way of calculating and paying the Levy?

The three stage process outlined in the consultation document appears to be valuation driven and will involve the developer preparing various reports at a number of stages of the process setting out various liability calculations which will require the local authority to assess the validity of those reports before accepting their outcome. As a result, there could be a potential for significant disagreement between the developer and LA at any of the above stages which may require additional evidence to be prepared, dispute negotiation to take place and potentially, recourse to an appeals process.

In addition, the initial provisional liability calculation is likely to cause significant issues as it will be extremely difficult to calculate with any degree of accuracy. This will lead to an inaccurate liability being recorded as a land charge at the Land Registry which may disincentivise investors when considering future property investment.

Q15. Is there an alternative payment mechanism that would be more suitable for the Infrastructure Levy?

The LPDF have no response to this question.

Q16. 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?

No. The difficulty with this approach is that on multi-phased schemes where sales of properties will continue to occur whilst other phases are in construction or have yet to be started, it will be difficult to know when to remove a local land charge and therefore, this may cause issues with mortgage availability for the sale of properties on the completed part of the site. This needs to be considered in greater detail to ensure that any proposal is workable.

Q17. Will removal of the local land charge at the point the provisional Levy liability is paid prevent avoidance of Infrastructure Levy payments?

The LPDF have no response to this question.

Q18. 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?

Disagree. LAs should not have the ability to request early payment of the levy as this would be done on a LA by LA basis adding further uncertainty into the system and potentially causing cashflow issues for the developer as a result. The IL needs a level playing field approach across all LAs.

Q19. Are there circumstances when a local authority should be able to require an early payment of the Levy or a proportion of the Levy?

No. See above.

Q20. 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?

It appears that the IL process which is being consulted upon is predicated heavily on valuation exercises to a much greater extent than they are used presently. It is therefore questioned whether there are the skills, expertise and resources available in both the professional valuation sector or LAs to deal with these processes. This lack of resource is only likely to lead to additional delays in the planning system as the correct skills are acquired and the process of challenge is undertaken. This additional resource ask of a system that is already significantly under-resourced is of significant concern, and will only lead to additional delays.

Q21. To what extent do you agree that the borrowing against Infrastructure Levy proceeds will be sufficient to ensure the timely delivery of infrastructure?

Disagree. Allowing LAs to borrow against future potential funding from IL receipts is a risky endeavour for both the LA and any lender potentially financing the infrastructure investment. There are a whole host of reasons why the potential funding from the IL might not fund the infrastructure provision as originally envisaged including, sales values of the final scheme reducing, development being delivered slower than originally anticipated because of labour or materials shortages, a change in market conditions, or development not being delivered in the same quantum as originally proposed. All of these circumstances would leave a LA exposed to liabilities which they cannot cover from the IL receipts and this is unlikely to be a risk that they would be willing to take.

It is also of concern that many LAs, particularly smaller district councils, are likely to struggle to deliver large scale infrastructure projects because they do not have the skills and resources available for them to deliver such projects. As a consequence, it is highly likely that either the infrastructure would not be provided in a timely manner or potentially, the infrastructure would not be delivered at all.

Q22. 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 disagree – It is currently unlawful for financial contributions to be sought by way of a planning condition as the use of S106 Agreements is the pathway to securing such contributions. If the government were to introduce the mechanism detailed above, it would need to completely amend planning law to allow for this change in approach.

Q23. Are there other mechanisms for ensuring infrastructure is delivered in a timely fashion that the government should consider for the new Infrastructure Levy?

Yes. It is considered that rather than completely re-inventing the system of developer contributions as proposed in the current consultation, the government simply review the current system to ensure that it works more effectively and efficiently. The current system works reasonably well, but could be improved by making CIL mandatory for LAs and by properly resourcing both LA planning and legal systems so that delays in the preparation and resolution of S106 Agreements are minimised.

Q24. 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?

Infrastructure Delivery Strategies (IDS) are very similar to the current Infrastructure Delivery Plans (IDPs), with both setting out the infrastructure priorities of the LA. However, neither document is binding upon a LA and spending priorities may change over time which will not be reflected in their latest version of the IDS. Therefore, they are simply a guide as to the LAs objectives for infrastructure provision and will not provide the transparency and certainty that the government, communities and developers require.

Q25. In the context of a streamlined document, what information do you consider is required for a local authority to identify infrastructure needs?

Any IDS will need to be prepared and examined alongside the LAs local plan and IL charging schedule to ensure that all documents are aligned in their objectives and that the IDS and IL are justified, deliverable and do not make development unviable. The local plan sets the long term growth strategy for a LA area and it is essential that the IDS supports the delivery of the local plan so that the local area can accommodate the growth that is envisaged.

Q26. Do you agree that views of the local community should be integrated into the drafting of an Infrastructure Delivery Strategy?

Yes. This should be done alongside the community involvement undertaken during the preparation of the LAs local plan to ensure that the community understand the link between the infrastructure requirements and development envisaged for an area. It is also critical that all relevant infrastructure stakeholders engage in this process, as this has often not been the case in the preparation of IDPs and has consequently led to organisations requesting additional funding, not detailed in the IDP, at a late stage of the planning process.

Q27. 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.
- All of the above.

All of the above.

Q28. 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.**

All of the above. All of the listed criteria are likely to assist in the efficient operation of the IL. However, it is suggested that in order for the relationship between district councils and county councils in two-tier areas to be improved, there should be a specific designated procedure for the allocation of IL funds between the two types of organisation, with a dispute resolution procedure established so that county councils are able to access the funding they need to deliver the infrastructure that they are responsible for.

Q29. To what extent do you agree that it is possible to identify infrastructure requirements at the local plan stage?

See response to **Q25** and **Q26** above.

Q30. 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?

The answer this question will depend upon the ability of the LAs to set minimum thresholds and IL rates which do not render developments unviable. It is of concern that if the 'right to require' percentage is not set appropriately, given that the provision of affordable housing under the IL will be prioritised, the ability to deliver other infrastructure may be squeezed. Given that the levy is a fixed level of contribution, this could mean that other forms of infrastructure which are required to make a development acceptable are simply not provided, as the provision of affordable housing would take precedence.

Q31. 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?

It is considered that the delivery of 100% affordable housing schemes should be encouraged and charging the IL on such scheme may make them unviable. Therefore, as these schemes may require some infrastructure to be provided, a sensible approach may be for LAs to set a discounted IL rate for such schemes.

Q32. How much infrastructure is normally delivered alongside registered provider-led schemes in the existing system? Please provide examples.

The LPDF have no response to this question.

Q33. 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?

As set out in response to **Q30** above, it is important that the level of 'right to require' that is set must be at a rate that does not make other required infrastructure undeliverable because of a lack of funding. Therefore, whilst setting a national maximum for the 'right to require' may not be appropriate, there needs to be strong guidance on how LAs should strike the right balance between the 'right to require' and other infrastructure provision, whilst ensuring that development remains viable.

Q34. Are you content that the Neighbourhood Share should be retained under the Infrastructure Levy?

Yes. If this is supported by a positively prepared Neighbourhood Plan which sets out a growth strategy across the plan period with an evidenced need for local infrastructure provision.

Q35. 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.

The LPDF have no response to this question.

Q36. 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?

The LPDF have no response to this question.

Q37. 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.

The LPDF support the use of a small proportion of the IL for a LAs administrative purposes but that this should be set at a level that is commensurate with the cost of undertaking such tasks. Rather than set a standard level of 5%, it should be for LAs to determine, with evidence, the cost of administration of the IL and to set an appropriate rate through the IL charging strategy, perhaps with a nationally set maximum of 5%.

Q38. 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;
- self-build housing;

Agree. Given that the government are seeking to encourage the delivery of self-build housing, allied with the fact that the planning system is complex and expensive to negotiate for self-builders, the discretionary relief for the above circumstances should be retained.

Q39. 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. There should be discounts applied to the levy rates where innovative technologies are employed on development schemes to deliver enhanced sustainable approaches to tackling such issues as climate change and Net Zero.

Q40. To what extent do you agree with our proposed approach to small sites?

Given that the government wish to encourage the delivery of residential schemes through SME housebuilders, and the fact that many SMEs are currently struggling with an overly-complex, prohibitively expensive and uncertain planning system, it is considered entirely appropriate for small sites to be exempt from the IL and potentially, from the 'right to require'.

However, the LPDF consider that the current definition of small-scale is entirely inappropriate and needs to be widened considerably in order to encourage SMEs of all sizes to establish their businesses and to grow and to increase housing delivery significantly through this source. A definition of small sites should therefore encompass sites of up to 100 units and a discounted IL and 'right to require' rate should be applied to these sites. This would ensure that SMEs are able to compete in a market which is dominated by the volume housebuilders at present.

Q41. What risks will this approach pose, if any, to SME housebuilders, or to the delivery of affordable housing in rural areas?

The LPDF do not foresee any risks to SME housebuilders if a wider definition of small sites is adopted as set out in answer to **Q41** above. However, if the definition of small sites is kept as less than 10 dwellings, then the new IL regime could seriously impact the viability of many SME housebuilders going forward, further reducing the contribution that they make to housing supply across the country.

Additionally, if the government continues to allow LAs to set lower minimum thresholds for the 'right to require' in rural areas, this could similarly jeopardise the delivery of much needed rural market housing which is predominately delivered by SME housebuilders.

Q42. Are there any other forms of infrastructure that should be exempted from the Levy through regulations?

Yes. Any infrastructure which is to be provided using levy receipts should be exempted from the levy.

Q43. Do you agree that these enforcement mechanisms will be sufficient to secure Levy payments?

The proposed enforcement mechanisms do not appear to have been designed to promote collaboration and negotiation between the relevant parties before enforcement action is taken. The proposed system does not allow for addressing unforeseen changes in circumstances such as rapidly increasing build costs (an issue which has been faced recently by the construction sector), the discovery of unknown abnormalities on site, or the impact of rapidly climbing inflation rates which may render some sites under the proposed system, unviable.

Where a site is marginal, there is a risk that imposing a stop notice or placing limits on occupation prior to payment of the levy could force developers into insolvency with no right to any form of negotiation or dispute resolution. Therefore, to ensure that under the new system such

circumstances do not arise, there should be a dispute resolution procedure put in place with clear guidance on what circumstances would trigger the use of such an approach, and what corrective measures could be employed before enforcement action is taken.

Q44. Do you agree that the proposed 'test and learn' approach to transitioning to the new Infrastructure Levy will help deliver an effective system?

The current 'test and learn approach' is welcomed as the new approach to IL is a paradigm shift from the current system with many unknown variables that could impact on the delivery of new development in a negative way. However, the proposed period for roll-out is significantly drawn out meaning that LAs and developers will be operating under both systems for a significant length of time. This is likely to have implications for transparency of the planning system, resourcing of both levy systems, and could create an uneven playing field where LAs are favoured because of their position on IL at the time.

Q45. 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?

The LPDF have no response to this question.