

## Infrastructure Levy Technical Consultation

### 12 March 2023 – 9 June 2023

#### INTRODUCTION

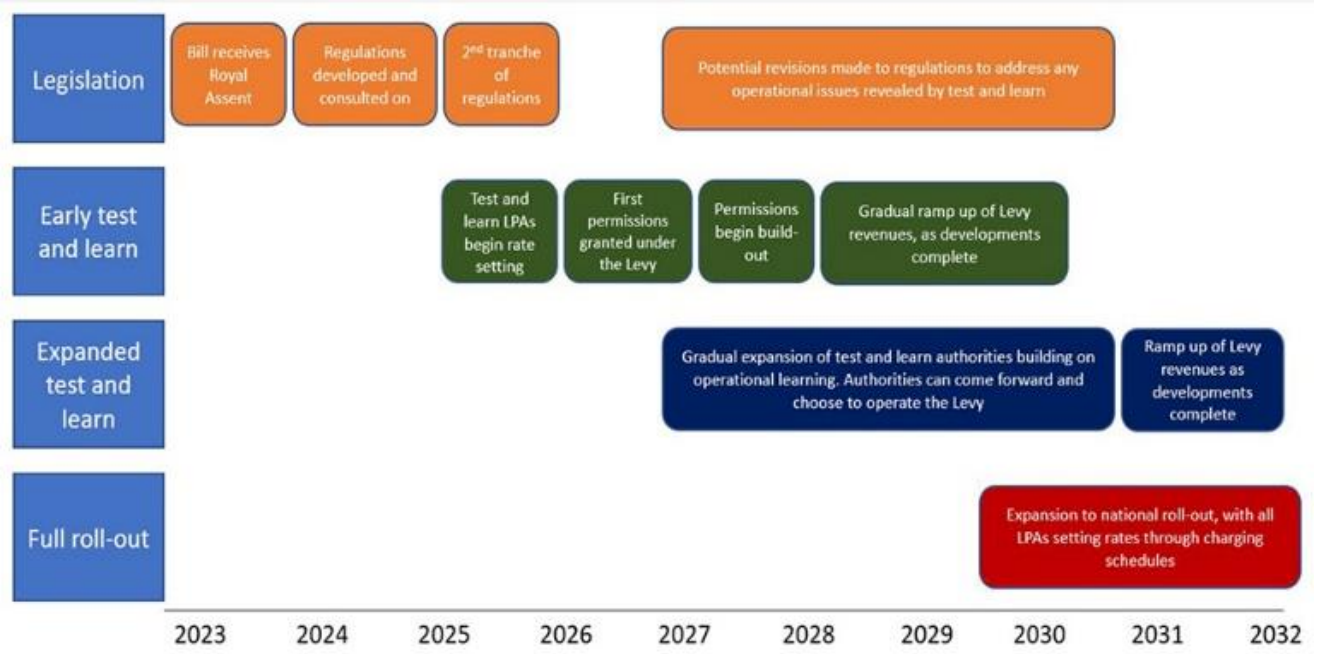
The Levelling Up and Regeneration Bill (LURB) provides the framework for replacing the current system of developer contributions with a mandatory Infrastructure Levy.

Primary legislation in Part 4 of and Schedule 11 of the LURB provides the overarching framework for the Infrastructure Levy which includes the following fundamental elements:

- The Levy will be mandatory.
- Levy rates will be set by charging authorities (taking into account viability and that rates can deliver affordable housing at a level equalling or exceeding what developers deliver now).
- Charging schedules will undergo examination in public.
- Charging authorities must publish an Infrastructure Delivery Strategy.

The Technical Consultation sets out proposed approaches to the Infrastructure Levy with regard to how it will work in practice. The outputs from the consultation will feed into the preparation of draft Infrastructure Levy regulations which will also undergo consultation.

The government is proposing a ‘test and learn’ approach to the Infrastructure Levy, which as presented in the following diagram, proposes that the Infrastructure Levy will not be fully rolled out across England until approximately 2029/30.



**Source:** [Technical consultation on the Infrastructure Levy - GOV.UK \(www.gov.uk\)](https://www.gov.uk/technical-consultation-on-the-infrastructure-levy)

## WHY CHANGE THE CURRENT SYSTEM?

Although developer contributions estimated to be worth around £7 billion were agreed in 2018/19, the government view the planning obligations system as uncertain and opaque because it is subject to negotiation. This results in uncertainty for local communities and delays in the granting of planning permission. CIL is more predictable, but the government does not believe it is flexible enough to respond to changing market conditions and CIL is unable to capture value uplift.

The government recognises the importance of value capture from new development and are proposing to establish a more simple and streamlined system which is more transparent for local communities.

## SUMMARY OF KEY CONSULTATION POINTS

### A. Types of Infrastructure that can be funded by the Levy

The consultation proposes dividing infrastructure into two different categories:

- **Integral Infrastructure** – infrastructure that is essential to the operation of a site, and must be delivered by the developer alongside the construction of the development. The consultation emphasises that ‘integral’ infrastructure, including requirements for contributions towards Biodiversity Net Gain, will be expected to be accounted for when setting Levy rates. Where possible, planning conditions will be the primary means of securing this form of infrastructure. However, where this is not possible, section 106 (S.106) may be used in a more focused way, using **Delivery Agreements**. These will plug gaps in what conditions cannot secure.
- **Levy Funded Infrastructure** – infrastructure which is not needed for a particular site to function but is needed to address cumulative impacts of development. The consultation document provides examples of these such as expansion or improvements to schools, improvements to local emergency services for example.

The consultation recognises that a lack of clarity around the two categories of infrastructure that fall into the above classifications may lead to inappropriate rate setting. Therefore it proposes a range of options for creating a distinction between the categories:

- A set of principles established in regulations or policy.
- A nationally set list of types of infrastructure that are either ‘integral’ or ‘Levy funded’ set out in regulations or policy.
- Principles and typologies are set locally.

### B. Proposed Levy Routeways

It is acknowledged that the S.106 route of infrastructure funding will still be necessary in some cases where sites have complex infrastructure needs. The consultation proposes three different ‘routeways’ for S.106 to be used:

- **The Core Levy Routeway** – The majority of new development will be subject to this routeway. Delivery Agreements will secure 'integral' infrastructure where conditions cannot be used.
- **Infrastructure In-Kind Routeway** – This route would require in-kind payment of levy liabilities secured through S.106 agreements. Thresholds, based on site size, will be set, which will dictate which sites will fall under this routeway. The level at which the threshold is set may impact on the viability of development sites, and will also require clear expectations with regard to the location of 'levy-funded infrastructure', to be set out in the Local Plan and Infrastructure Delivery Strategies.
- **S.106-only Routeway** – This will apply to the minority of developments, for example minerals and waste sites.

## C. Setting Rates and Minimum Thresholds

The consultation proposes to allow local authorities to set their own rates and minimum thresholds (a threshold for liability below which the Levy will not be charged). In setting rates, it is proposed that charging authorities need to take into account:

- The level of revenues and affordable housing forecasted to be generated from the Infrastructure Levy (IL) compared to those at present;
- The viability of development; and
- The Infrastructure Delivery Strategy (for more information see section E below) which outlines how local authorities intend to spend Levy receipts, including the proportion put towards affordable housing.

Local authorities will be required to use appropriate available evidence to inform the IL charging schedule and the schedule will be subject to public examination.

**The Levy rates will be charged to the internal area of a development as a percentage of the final Gross Development Value, above the minimum chargeable threshold. In simple cases, the final GDV will be the sales value of the housing.**

The technical consultation explains that there is the provision in the Levelling up and Regeneration Bill to allow for 'stepped' CIL rates, which may be set at a cautious level to begin with, but can be increased over time.

In some cases the uplift in values on sites where existing floorspace is re-used or demolished and rebuilt should be sought, whilst recognising that value capture is lower than for development on vacant land. This approach would require a bespoke charging framework with variable rates including 'main rate'; 'regeneration rate' and; 'replacement rate'.

In terms of permitted development, the government proposes setting a national maximum levy rate to protect viability. Local authorities will then retain the ability to charge the Levy at a maximum rate, or at a lower rate, if they choose to.

The government is exploring ways in which parts of the rate setting process can be standardised, incorporating uniform inputs using standard rate setting models. The government is intending to work with local authorities through responses to the consultation and through the 'test and learn' process, to develop tools and provide support.

## D. Charging and Paying the Levy

CIL liabilities are set at the point of planning permission being granted. The government has proposed a three stage process by which CIL is calculated and charged:

1. **Planning application stage** - Indicative liability calculation.
2. **Post-commencement (before the development is occupied)** - Provisional liability calculation and payment. Upon payment, the local land charge is removed.
3. **Post-completion or once the development is sold** - final adjustment payment. Proposed financial penalties for non-payment of final IL liability.

The consultation identifies that there are concerns regarding the timing of levy payments occurring nearing completion of a scheme and the associated implications for infrastructure delivery and local authority cashflows. The government propose that the following measures will work to mitigate this concern:

- o Allowing local authorities to borrow against Levy proceeds.
- o Allowing the forward funding of infrastructure.
- o The provision of 'integral' infrastructure by a developer will mean that infrastructure crucial to the operation of a site will come forward alongside its construction.

## E. Delivering Infrastructure

Local authorities will be required to prepare a new document, the Infrastructure Delivery Strategy (IDS) to support consideration of infrastructure requirements arising from planned development in the area. The IDS will be a tool for local authorities to set out spending priorities and for local people to understand what infrastructure will be delivered. The IDS will require close joint working with infrastructure partners to plan for and fund new infrastructure.

Finally, there will be an independent examination of the IDS, which must be combined with either the examination of a charging schedule or a Local Plan.

The IDS will be formed of three parts:

**Part 1: Baseline of infrastructure** in the area, how this will be impacted by planned growth and what infrastructure will be required to support it.

**Part 2: Approach to funding** infrastructure through the IL and other funding sources.

**Part 3: Strategic Spending Plan** setting out the local infrastructure priorities that will be funded by the Levy. This should contain the local authority's approach to the following infrastructure types:

- o 'Integral' infrastructure
- o Prioritisation of 'levy funded' infrastructure
- o Affordable housing
- o Proportion of the Levy for a neighbourhood share
- o Proportion of the Levy for administration
- o Spend on non-infrastructure items e.g. social care.
- o Borrowing and the extent to which the local authority intends to use borrowing to deliver the right infrastructure at the right time.

The IDS will replace the Infrastructure Delivery Plan in the current system, supporting both the Local Plan and Levy charging schedules. The inclusion of the IDS in the Levelling Up and Regeneration Bill will enable local authorities to require the assistance of certain public bodies to assist them in relation to the IDS. As part of the examination of the IDS, the consultation proposes that only the spending part of the IDS will be required to be submitted for examination, although the wider document can be used as evidence to inform the Local Plan.

## F. Delivering Affordable Housing

The aim of the Levy is to deliver at least as much on-site affordable housing as developer contributions do now. On-site affordable housing will be delivered as an in-kind payment of the Levy through a new 'right-to-require'. This will see a percentage of the Levy value delivered in-kind by developers as on-site affordable housing, protecting it from the pressure of other spending priorities.

The 'right-to-require' and Levy receipts can be used to secure affordable tenures such as Social Rent, Affordable Rent, Shared Ownership, and First Homes. Under this process, the local authority will set the proportion of the Levy that must be delivered in-kind through on-site affordable housing, and developers will be obliged to provide that contribution from the total levy amount that they are charged. The relationship between the Local Plan, IDS and the 'right-to-require' is fully integrated where affordable housing needs and types interacts with viability evidence, threshold setting, and the 'right-to-require' proportion.

## G. Other Areas

The consultation proposes the following:

- **Retaining the principle of the neighbourhood portion.** The spending of the neighbourhood share should be based on evidence showing what neighbourhoods want to improve in there are.
- The Levelling Up and Regeneration Bill includes provision to continue to allow a portion of the levy to be spent on the **transition to the new system and administration of the levy.**
- **It is proposed that exemptions for self build, residential annexes and extensions will be retained** with further exemptions and offsets being investigated eg. an offset for new buildings that go beyond national or local environmental policy could have the value of sustainable technologies offset against levy liabilities.
- **A reduced levy rate for small sites eg. less than ten units.** Also on small sites, a local authority will not be able to require a proportion of receipts to be paid towards affordable homes.
- **Government or public funded infrastructures be exempt from the Levy.** This includes publicly funded schools, hospitals, and other medical facilities, or infrastructure to deliver renewable energy. S.106 may be needed alongside this exemption to secure site specific mitigation.
- **Issuing of stop notices** will be permitted to prevent developments commencing when no assumption of Infrastructure Levy liability is in place. Also impose **restrictions on occupation** unless and until the provisional liability is paid. Failure to pay liabilities will be met with financial penalties.

## H. Introducing the Levy

The Government recognises that the transition to a new system of developer contributions will represent a significant change. Key concerns include how the new Levy will be administered and operated due to constraints on resourcing and the complexity of the new system. Given these concerns, it is proposed that the Levy will be introduced in a representative minority of local authorities in the first instance using a ‘test and learn’ approach.

Once the Levy is introduced nationally (see diagram on page 1), the intention is that the design of a charging schedule and IDS will need to be introduced together. Local authorities will not be required to undertake a Local Plan review for the Levy to be adopted.

Section 204M(3) of the Levelling up and Regeneration Bill gives the Secretary of State the power to appoint a person to prepare and issue a Levy charging schedule on behalf of a charging authority. The intention is that this mechanism will ensure that local authorities all have Levy schedules in place in accordance with national rollout, once the ‘test and learn’ period is completed.

## KEY OBSERVATIONS AGAINST CONSULTATION POINTS

Consultation Point	DAC Planning Observations
Types of infrastructure that can be funded by the Levy.	<p>It is suggested that identifying whether infrastructure is ‘integral’ or ‘levy funded’ can only be set at a local level, as part of the preparation of a Local Plan and supporting evidence. Authorities which rely on windfall sites to meet housing supply targets will find this approach more challenging where less evidence is available to assess the need for on-site infrastructure and the need for infrastructure required as a result of the cumulative impact of growth.</p> <p>Timing of Local Plan and supporting evidence alongside the development of an IDS will therefore be critical in the development of the Infrastructure Levy.</p>
Proposed levy routeways	<p>The approach to setting thresholds for levy routeways will need to be underpinned by Local Plan and supporting evidence, and the IDS. Again, timing and coordination of technical work and engagement, to support both the Local Plan and the preparation of the charging schedule, will be critical.</p>
Setting rates and minimum thresholds	<p>The process for setting IL rates will require significant resources, similar to the setting of CIL rates. The task will require proportionate consultation and engagement with the development industry and viability consultants. The proposal to introduce standardised inputs to the preparation of IL rates is welcomed, and it is recommended that wherever possible a standardised approach is set out by the government to reduce the risk of challenges on the grounds of viability and methodology.</p> <p>Caution should be taken in introducing the option for too many variables for rate setting as the more complex the charging schedule becomes, the more challenging it is to implement.</p>

# DAC Planning Briefing Note May 2023

Consultation Point	DAC Planning Observations
Charging and paying the levy	The proposed approach will require authorities to employ and develop teams with new skill sets, particularly focused on valuation and GDV assessment. Furthermore, new systems will need to be established to implement and monitor the Levy. It is recommended that a standardised digital programme, which could be made available to all authorities, is developed to support them in the day-to-day administration of the Levy.
Delivering infrastructure	DAC Planning welcomes the emphasis placed on the IDS. We believe that evidence to support infrastructure delivery is critical for the planned system to deliver infrastructure alongside growth. Strategic spending plans will need to be prepared alongside the production of a Local Plan, and will inform viability assessment and the setting of levy rates. Therefore, the coordination and timing of the preparation of these documents will be key and will require a strong project management approach.
Delivering affordable housing	As above, setting the right to require threshold will require coordination with the Local Plan and supporting evidence, the IDS and meaningful engagement with developers and registered providers. Setting a strategic framework for the delivery of affordable housing that is aligned with the Local Plan is key. It will require significant resource and specialist skills within local authorities to set the right to require threshold, and ensure affordable housing is delivered.
Other areas	DAC Planning agrees that the neighbourhood portion should be retained and supports the proposal that neighbourhoods should contribute towards infrastructure spending evidence to show how they wish to spend the levy in their area.
Introducing the levy	DAC Planning agrees with the 'test and learn' approach and emphasises that as part of this stage, the government should look to develop standard approaches to setting levy rates and implementing the levy through a nationwide IT programme to support authorities in the rollout, rather than requiring authorities to purchase a range of new programmes, or adapt existing systems and set up new templates, automated monitoring systems etc. This would save time and resource and will ensure that the levy is implemented effectively and consistently across the country.