

MAYOR OF LONDON

The Rt Hon Michael Gove MP
Secretary of State
Department for Levelling Up, Housing and
Communities
2 Marsham Street
London
SW1P 4DF

Date: 9th June 2023

Dear Secretary of State,

Technical Consultation on the Infrastructure Levy March 2023

Thank you for the opportunity to respond to the technical consultation on the Infrastructure Levy (IL). We welcome your ambition to secure more funding for affordable homes and infrastructure and to create a developer contributions system that is quicker, clearer and more consistent. However, having considered the IL proposals carefully since they were initially set out in the Planning White Paper 2020, including the latest consultation document, we have deep concerns that IL would not be capable of achieving this.

These are shared widely across the housing and planning sectors as reflected in our previous correspondence, including the joint letter sent to you by 18 organisations on 16th February 2023¹. The key issues with the proposals remain that:

- IL would result in more complex and less effective arrangements than the current developer contributions system which, thanks to the Mayor's threshold approach, is increasing the percentage of affordable homes delivered through the planning system in London.
- Including affordable housing within the scope of IL means that the rates charged would need to be many times higher than the Community Infrastructure Levy (CIL). Setting rates at the level needed to maintain current levels of affordable housing would make less viable developments undeliverable. Conversely, setting lower rates would reduce contributions and the amount of affordable housing and infrastructure provided to support the delivery of development and for wider community.
- Instead of receiving payments when development starts, these would be delayed until a much later stage in the process and based on development value. This approach means that infrastructure would not be in place when it is needed and there would be greater uncertainty and risk for councils, developers and communities about level of contributions to be made. This risk would be exacerbated if councils have borrowed against expected future payments to deliver infrastructure alongside the development, however most are unlikely to be in a position to do so.
- Basing IL on the final value of a development is likely to result in multiple valuations being required for each liable development, rather than just those that do not meet policy requirements, as is currently the case. This would be complex, contested and protracted, particularly for schemes involving valuer judgment such as those with

¹ [nhf-letter-to-michael-gove-on-proposed-infrastructure-levy.pdf \(housing.org.uk\)](#)

MAYOR OF LONDON

properties that will be rented. Most authorities do not have the resources or expertise to implement this process robustly which could be subject to avoidance and dispute. Determining the final payment after all properties have been sold could also result in significant enforcement challenges, particularly if a development company has ceased trading, they own no assets once the sales have taken place, they go into administration or are based offshore.

- Allowing IL to be spent on general services or other items that are unconnected to development would exacerbate significant existing funding shortfalls for affordable housing and infrastructure. It would also increase the risk of proposals being unsustainable and reduce community support for development which could result in fewer applications receiving planning consent.
- Restrictions to the use of Section 106 agreements may prevent off-site mitigation works from being undertaken or other important obligations such as employment and training measures, affordable workspace, construction monitoring or carbon offsetting from being secured. Strategic and upper tier authorities may not be able to secure contributions to address the impacts of development by improving the capacity of public transport and other infrastructure to support growth.

The research led by the University of Liverpool which was published by DLUHC alongside the consultation document also raises a range of potential challenges for authorities relating to the setting of rates for brownfield sites that would maintain viability, delays to the local plan process and the need for additional training and support given the degree of departure from the existing system.

CIL is working well in London, with 33 of the 35 local planning authorities currently levying a local charge. By the end of 2021/22, cumulative CIL receipts for those authorities amounted to approximately £1.43bn helping to deliver vital infrastructure to support sustainable growth in each authority. While the retention of Mayoral CIL (MCIL) to repay Crossrail (Elizabeth Line) borrowing is welcomed, the processes for charging and collecting MCIL are different to IL. Administering both systems would be complex and create additional cost and staff resource burdens which could impact MCIL receipts and consequently the repayment of Crossrail financing.

In summary, IL is currently unworkable and we would request that it is reconsidered in light of the widespread concerns with the proposals. We maintain that the best approach to achieve our shared goals is to retain and improve the current developer contributions system. Our consultation response on the technical aspects of the proposals, which is provided below, should be read in this context and represents the views of the Mayor of London on behalf of the Greater London Authority, Transport for London, Old Oak and Park Royal Development Corporation and London Legacy Development Corporation.

Yours sincerely,



Jules Pipe CBE

Deputy Mayor for Planning, Regeneration and Skills



Tom Copley

Deputy Mayor for Housing and Residential development

MAYOR OF LONDON

Annex 1: Response to Infrastructure Levy technical consultation questions

June 2023

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

Please provide a free text response to explain your answer where necessary.

Yes. The existing Community Infrastructure Levy (CIL) definition of development should be maintained under the Infrastructure Levy (IL). The reasons for this approach, including the exemptions set out above, would also be relevant under IL and are well understood by the development industry and local authorities.

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.

Yes. It is vital that onsite infrastructure that is integral to the delivery of development continues to be secured and that this sits outside of the scope of IL. The type, location, phasing, and delivery of this infrastructure will need to continue to be secured through the planning permission/ conditions or S106 / delivery agreement as relevant. There are a range of different types of integral infrastructure provision which may be required depending on the circumstances and scale of the relevant site. This may include open space and other green infrastructure, sustainable transport and other community facilities, sustainable urban drainage or heat networks or other measures to support

Affordable housing should also be treated as integral to the development site and should fall outside of IL. The reasons for this have been set out previously and are also referred to below. These include that on-site affordable housing provision would need to be negotiated and secured through a S106 / delivery agreement, setting out eligibility, nomination rights, affordability, and delivery obligations, regardless of which system this falls under.

MAYOR OF LONDON

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]. Please provide a free text response to explain your answer, using case study examples if possible.

The same distinction that currently exists between S106 and CIL should apply. This would be a combination of options a (a set of principles established in regulations or policy) and option c (principles and typologies set locally with reference to national policies). In particular, obligations that secure Development Plan requirements that are directly related to the development and necessary to make it acceptable in planning terms, obligations that mitigate the development’s impacts and any necessary site specific infrastructure identified in the Development Plan should continue to be treated as integral.

Given the time taken to introduce IL following the Test and Learn approach, the CIL Regulations should be reviewed to ensure that CIL in-kind provisions are workable so that significant onsite infrastructure can be taken into account when determining CIL liabilities.

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] Please provide a free text response to explain your answer where necessary.

No. Contributions through IL are unlikely to fully address the full extent of affordable housing need and infrastructure requirements in London. Therefore, it would not be appropriate to use IL funding for general on-going service provision that is not required to make the development acceptable in planning terms. This would put the delivery of new development at risk and would exacerbate the current substantial shortfalls in funding needed for affordable housing and infrastructure in London.

However, it is important that obligations that are current secured and that are necessary to make development acceptable such as training and employment contributions, carbon offset contributions and the operation or maintenance of infrastructure would continue to be secured.

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]. Should expectations be set through regulations or policy? Please provide a free text response to explain your answer where necessary.

The prioritisation of IL for infrastructure and affordable housing is supported. However, as set out above, contributions are unlikely to fully address affordable housing and infrastructure requirements in London so it would not be appropriate to allow for the use of IL to fund general service provision that is unrelated to development.

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] Please provide a free text response to explain your answer where necessary.

As set out above it is important that obligations that are current secured such as employment and training contributions, affordable workspace and carbon offset contributions continue to be provided, however, IL should not be spent on items that are unrelated to development.

MAYOR OF LONDON

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]. Please provide a free text response to explain your answer, using case study examples if possible.

This should be set at a London-wide level for consistency by the GLA. Given the high need for affordable housing in London and challenges of developing brownfield sites, an appropriate threshold would be 150 residential units, which is the threshold for most referable schemes in London. CIL should however be retained for these sites to avoid the negotiation of contributions for offsite infrastructure delivery and complexity of valuation and the calculation of IL liabilities which would be necessary to ensure that the value of the infrastructure is no less than that which would arise under IL.

A high threshold would not be effective. For example, the Legacy Communities Scheme (LCS) (plan reference: 11/90621/OUTODA), a comprehensive phased redevelopment of the Queen Elizabeth Olympic Park following the 2012 Olympic and Paralympic Games would have fallen well below the 10,000 new homes threshold but has required significant infrastructure delivery early in the development programme. It would have been very difficult to secure the appropriate level of in-kind infrastructure provision, with sufficient flexibility to respond to changing needs over the course of a long-term, phased development, without the use of a Section 106 agreement.

By way of example, the LCS Section 106 agreement in question includes 'cascade' provisions, used to determine whether on-site healthcare facilities should be provided within various phases of the overall development. Where it is determined that healthcare facilities are not to be provided within a given phase, the S106 agreement then allows a portion of this provision to be required in a subsequent phase. It is not clear that such an approach would have been possible under the 'Delivery Agreements' proposed under the Core Levy routeway.

It is noted that the 'high threshold' could potentially include 'complex urban regeneration sites with large scale redevelopment of existing buildings.' If this is defined in terms of the quantum of (re)development, it risks arbitrariness that could result in sites being considered under the core routeway, when in fact extensive in-kind infrastructure provision may be needed. Consequently, the threshold in London should be determined by the GLA or this should be set at a lower level as referred to above.

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? Please provide a free text response to explain your answer.

Under the Core Levy routeway, 'Delivery Agreements' will largely be used to secure 'integral infrastructure' in circumstances where conditions cannot be used. However, in order to achieve the same scale of planning benefits as currently realised by S106, the scope of what can be secured should be significantly widened beyond 'integral infrastructure.' Presently, S106 agreements are used to secure a range of planning benefits that do not relate to fixed, physical infrastructure, for instance securing provisions to for local employment and training opportunities at the construction and end-use phase of a development or securing travel planning measures that enable sustainable modal shift. Such planning benefits are routinely negotiated in developments that would fall below the proposed low threshold of 500 homes.

It is noted that 'Delivery Agreements' could be used to '[facilitate] additional payments where a development does not meet planning policy requirements.' This is an essential provision.

MAYOR OF LONDON

For instance, this is particularly important in securing Carbon Offset Contributions, which are required by the London Plan where development cannot achieve net zero carbon targets on-site. It would be inappropriate to fund carbon offsetting measures using IL liabilities because they are a form of mitigation required to make a given development acceptable in planning terms and contributions vary from site to site depending on the level of carbon reduction achieved onsite.

It is also unclear how this might work in securing biodiversity net gain for those developments whose circumstances would require that an in-kind or financial contribution towards off-site enhancement is made to meet the requirement for a 10 per cent improvement. The scope of development agreements would need to be wide enough to continue to allow flexibility for both in-kind and financial contributions for off-site measures to ensure that other national, London-wide and local policy and legal requirements can be secured, and delivery monitored and enforced.

Additionally, the consultation states that 'any obligations contained in a Delivery Agreement will be subject to existing CIL Regulations (regulation 122) restrictions, and additional regulatory restrictions on use.' While the former is clear, it is not clear what the 'additional regulatory restrictions' would be. For the reasons set out above, we do not consider that additional restrictions should be applied.

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]. Please provide a free text response to explain your answer where necessary.

We have significant concerns regarding the quality and suitability of accommodation brought forward under permitted development rights (PDR) as set out in government funded [research](#). In addition to the poor quality and unsuitable location of some developments brought forward under PDR there are a range of other detrimental impacts including the inflation of land values and disincentives to undertake more comprehensive development, which in some circumstances would result in both a higher quality and quantum of development.

If current rights are retained IL should be applied to permitted development. For this to take effect, regulations should exclude any exemption for existing floorspace. This amendment should also be made to existing legislation to ensure that planning authorities can secure contributions from permitted development under CIL and S106.

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?

In principle, schemes brought forward under permitted development rights should be included within IL as they are capable of creating a value uplift. The threshold for qualifying permitted developments should be set locally as the value realised by such schemes could vary substantially by geography. This would be consulted on and publicly examined as part of an IL charging schedule. A nationally prescribed 'ceiling' should not be set as this would

MAYOR OF LONDON

run counter to principle that IL should be locally set and could artificially constrain the land value uplift that could be secured.

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]. Please provide a free text response to explain your answer where necessary, using case studies if possible.

While we have concerns about the potential for IL to not achieve the same level of contributions that are currently secured or to make less viable developments undeliverable as identified in the University of Liverpool research (or both), allowing an element of site-specific viability testing under IL would be the worst of all worlds. It is likely to result in protracted and complex negotiations, in addition to the additional complexity that arises as part of the valuation process for IL as well as reduced contributions.

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] – Strongly Disagree**
- **The use of different Levy rates and minimum thresholds on different development uses and typologies [Strongly Agree/Agree/Neutral/Disagree/Strongly Disagree/Unsure] - Disagree**
- **Ability for local authorities to set ‘stepped’ Levy rates [Strongly Agree/Agree/Neutral/Disagree/Strongly Disagree/Unsure] - Neutral**
- **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] - Disagree**

Please see further commentary in response to the next question.

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

There are significant cross sector concerns that IL would result in lower contributions being secured than the current system whilst also putting less viable developments at risk². A key reason for this is that including affordable housing within the scope of the IL means that the rates charged would need to be many times higher than under CIL. Setting rates at the level needed to maintain current levels of affordable housing would make less viable developments undeliverable. Conversely, setting lower rates will reduce contributions and therefore reduce the benefits to the community.

This would not be addressed by charging IL on the final sale GDV of a scheme which would also result in significant additional complexity and uncertainty for developers, planning authorities and communities. It would also not be possible to fully mitigate this through the use of different rates or thresholds which are likely to result in highly complex charging structures.

² [National Housing Federation, Letter to the Secretary of State for Levelling Up, Housing and Communities, February 2023](#)

MAYOR OF LONDON

Similarly enabling the setting stepped rates or separate rates for change of use would not overcome these issues which are fundamental to the framework under which the proposals are being brought forward.

These issues are particularly relevant in London given the substantial variation in development values across and within boroughs and for these reasons the GLA has set out the case for a London exemption and giving authorities the discretion to introduce IL or retain the current system if this would be more effective.

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] Please provide a free text response to explain your answer where necessary.

No. The proposed process would be highly complex, resource intensive and uncertain.

The consultation states that basing IL liabilities on GDV requires at least three stages of valuation / estimation of values for every site (and more for phased schemes) : 1) indicative liabilities are estimated at application stage; 2) a provisional payment close to completion and 3) a final adjustment payment following sale of properties.

The *indicative liability* would be determined at planning application stage but based on the average Gross Development Value (GDV) per square metre for a site in an area/ typology which would be set out in the Charging Schedule. This value is however likely to be substantially different from the provisional and final liabilities in many cases, because it would not be possible to assess every potential development site when producing a charging schedule and actual values may not be known for many years afterwards. Allowing applicants to provide a valuation at application stage runs the risk that they would seek to minimise liabilities, particularly for onsite provision of affordable housing and infrastructure in many cases. This would undermine any benefits of IL.

The *provisional liability* would be determined post decision, but prior to first occupation (or of a phase). This is very wide timeframe and the document does not indicate at what stage in this period the liability would be determined and any payments made. If payments are made close to occupation this would be a very late stage in the development process, with consequential impacts on the timely delivery of infrastructure.

The consultation document indicates that an independent valuation may be required, for example, if the developer or Local Planning Authority (LPA) consider that the value is a specific percentage lower or higher than the indicative valuation. Again, due to the likely difference between the average area/ typology in the charging schedule and the actual value for each site, this is likely to be required in many if not most cases. The price that a Registered Provider will pay for affordable homes will also be required, however RPs are often reluctant to disclose this.

It is proposed that payment of the provisional liability would be at the discretion of the developer. This would exacerbate the concern that funding would not be available when needed to deliver infrastructure to support development and also create enforcement issues as set out below. As a minimum, authorities should be able to require payment of the provisional liability (prior to completion), however this would still delay payment considerably compared with the current system under which initial contributions are normally made following commencement.

MAYOR OF LONDON

The *final liability* would be based on the sales price of the development, or a valuation of the market price if the development is not sold. Relying on the valuation of property that is not sold, for example, for build to rent and commercial development adds an unnecessary and complex process to the system. It would be subject to valuer judgment, avoid and dispute. Furthermore, because build to rent tends to have a lower development value than build for sale (which is offset by lower financing and profit requirements), it is likely that some developers may rent the properties initially but sell the homes for a higher amount than the IL valuation after the final liability has been determined.

Question 15: Is there an alternative payment mechanism that would be more suitable for the Infrastructure Levy? [Yes/No/Unsure] Please provide a free text response to explain your answer where necessary.

The significant issues referred to above arise primarily due to IL being based on the final value of the development. The current approach of determining requirements for infrastructure and affordable housing based on the quantum of development is more transparent, more certain and less complex than the proposed system.

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] Please provide a free text response to explain your answer where necessary

No. There is a clear risk in removing the land charge when the provisional payment has been made. As noted above, the final liability could be significantly different to the provisional payment. It is not clear that the suggested penalties would be sufficient to enable a local authority to enforce payment if, for example, a developer has ceased trading, they are a shell company with no assets once the sales have taken place, they go into administration or are based offshore or for some other reason are not contactable or traceable. In these circumstances a local authority may have paid for or delivered infrastructure but not be able to retrieve the IL payment due.

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] Please provide a free text response to explain your answer where necessary.

No, please see above.

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]. Please explain your answer.

Strongly agree. It is important that infrastructure is delivered prior to or alongside development to ensure that this does not place undue pressure on a local area and is sustainable. The current system already allows for payment of contributions through instalments and / or payments for different phases of developments which assists developer cashflow. Delaying all or the majority of the payment until site completion or occupation is unnecessary and likely to result in range of adverse impacts as set out above.

MAYOR OF LONDON

Alongside the timely payment of infrastructure contributions, significant additional staff resourcing is required for authorities to be able to effectively allocate and oversee the funding and delivery of infrastructure.

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? Please provide a free text response to explain your where necessary.

As above, payments should be made on implementation and in instalments or phased payments for larger schemes as with the current system. This strikes an appropriate balance between the need for the timely delivery of infrastructure while assisting developers' cashflow.

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]. Please provide a free text response to explain your answer where necessary.

No. The heightened role given to valuation under IL which may need to be undertaken multiple times for every liable development, including the right to appeal, would result in a highly complex, resource intensive and contested process. Most local authorities simply do not have the skills or resources to administer the proposed approach effectively. This would also have a range of implications for developers including additional uncertainty and resourcing requirements.

The consultation documents indicate that valuations may be undertaken at four stages per scheme or for phased development, for each phase within the scheme:

- Calculation of the provisional liability
- Calculation of the adjustment payment (if required by either party)
- Where a development is not sold
- Where an appeal is made regarding the calculation of the Levy liability

In addition, it will also be necessary to ensure that the sales price represents market value. This is essentially a further stage of valuation as it is entirely feasible that the sales price could be reduced below market value (intentionally or otherwise), which would also reduce the IL liability, for example due to bulk or inter-company sales.

As well as the value of market housing and commercial property, these valuations would also need to consider the value of any affordable housing and infrastructure.

Final Infrastructure IL liabilities would be based on GDV at completion based on the sales price of the development, or a valuation of the market price if the development is not sold. Relying on the valuation of property that is not sold, for example, for build to rent and commercial development, adds an unnecessary and complex process to the system. It would be subject to valuer judgment, avoid and dispute. Furthermore, because build to rent tends to have a lower development value than build for sale (which is offset by lower financing and profit requirements), some developers may rent property initially but subsequently sell the homes for a higher amount than the IL valuation after the final liability has been determined. This is an obvious gaming opportunity, in the absence of a clawback mechanism that would require any shortfall to be paid if the units are subsequently sold out of rented tenure. This is particularly the case because the consultation envisages a process

MAYOR OF LONDON

where the valuation could be undertaken at an earlier stage in the process with the value then index linked.

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]. Please provide a free text response to explain your answer where necessary.

Strongly disagree. The existing CIL system enables the timely delivery of infrastructure because local authorities receive initial payments at the commencement of development which helps them to programme and manage infrastructure delivery, albeit this is often also dependent on receipt of additional funding sources. The proposed IL system results in additional uncertainty and financial risk. This is heightened if authorities borrow against future projected levies that could be higher or lower than those anticipated at planning application stage or at interim payment stage on completion. Most authorities will simply not be in a position to take on the risk and costs associated with borrowing against uncertain IL receipts.

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] Please provide a free text response to explain your answer where necessary.

Strongly Agree. As set out above, infrastructure contributions should be made at an early stage to support the timely delivery of infrastructure to ensure that development is sustainable. Initial payments should be made on implementation with further contributions paid where authorities have introduced instalment policies or on the implementation of phases.

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] Please provide free text response to explain your answer where necessary.

As a minimum, a requirement of 50 per cent of the contribution should be paid on commencement or the commencement of phases where relevant. This would go some of the way towards balancing risk, as the chances of the final liability being lower than 50 per cent of the preliminary liability seems remote, but it would also allow the LPA to start funding the necessary supporting infrastructure as quickly as possible.

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] Please provide a free text response to explain your answer where necessary.

The strategic spending plan may help to provide a degree of transparency insofar as it will require authorities to set out how they will prioritise infrastructure expenditure at a high level. However, we support the recognition that there would need to be flexibility to apply the IL

MAYOR OF LONDON

receipts differently in response to the circumstances of development and availability of other funding sources.

This is particularly the case given the greater uncertainty that would arise regarding the timing and amount of IL receipts that would arise compared with the current system. Given that these would increase or decrease in proportion to market conditions, it will be harder for planning authorities to predict anticipated receipts. Such modelling is often essential to planning for and prioritising infrastructure expenditure as it allows planning authorities to have a degree of certainty around how much money will be available and when. CIL enables authorities to undertake modelling (albeit without a high degree of certainty) as they can use the anticipated quantum of development to indicatively calculate liabilities for a given scheme. Additionally, they can use instalment policies published in their charging schedules to know when payments will be made, provided that there is an anticipated commencement date. However, the wide window (after commencement, but before occupation) for payments makes this much more difficult under IL.

In this respect, it is unlikely that the strategic spending plan could provide meaningful certainty on IL expenditure. A much greater level of certainty for the delivery of infrastructure associated with development either on-site, in-kind or via financial contribution can be provided by linking this more directly to the implementation of development proposals through a S106/Delivery Agreement.

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

As per the consultation document, the following considerations are proposed for inclusion in the Infrastructure Delivery Strategy (IDS):

- **Part 1:** The baseline of infrastructure provision in their area, how this will be impacted by anticipated growth and what infrastructure will be required to support it.
- **Part 2:** The approach to funding infrastructure through the Levy as well as other funding sources such as existing s106 and CIL receipts.'

These are important considerations, and as a minimum, understanding baseline provision, projected growth and the resultant additional needs is essential to effective infrastructure planning. However, other considerations are also important. In particular, LPAs would need to work with neighbouring authorities as residents of one borough may use infrastructure in other boroughs. Furthermore, it is important not only to understand how infrastructure will be funded, but how it will be delivered. This would include identifying responsible agencies and determining the availability of land for the provision of essential services.

It will be important that that consideration is given to the need for utilities infrastructure, although it is worth noting that in the current regime, LPAs already state a difficulty in engaging with utilities on their local plans and infrastructure planning. The Mayor's Infrastructure Coordination Service seeks to address these issues and support local authorities, including through supporting the delivery of borough-level and sub-regional energy and water planning in London, with support from Government and regulators. It is vital that local authorities are adequately resourced to deliver the new IDSs and support more coordinated planning of all infrastructure needs.

The proposals for examination of the spending element of the IDS do not provide any suggestion about how this might work in terms of the tests that an examiner would need to apply in considering its soundness. If evidence for the IDS can only be used in support of Local Plan development, it is unclear what information an authority could use for an

MAYOR OF LONDON

examiner to test this part of the IDS. This might imply that the actual infrastructure plan with infrastructure items identified could only be practically tested as part of a Local Plan Examination constraining the ability to fund subsequently emerging infrastructure needs. Examination of the spending plan will also constrain authorities' ability to respond flexibly to changes in priority or circumstances where, for example, other funding sources for key infrastructure change positively or negatively and more or less IL money than envisaged is required. It is suggested that a more practical approach is to require regular review and updating of an IDS, including the spending plan, following the Local Plan examination without examination of the spending plan but with a requirement to demonstrate regular and effective consultation with infrastructure providers as part of the review process, with the review report published on the authority website.

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] Please provide a free text response to explain your answer where necessary.

Yes, views of the local community should be considered through public consultation. These may be especially useful in helping to prioritise expenditure, particularly for the local portion, rather than in identifying projected gaps in provision (where technical studies are more likely to be the primary consideration). It is suggested that focuses on the infrastructure planning element of the Local Plan process so that communities can engage in the context of proposed change and wider policies.

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**

Comments on each element are set out below. The process outlined is likely to involve significant additional work and resource requirements for LPAs and so additional funding should be provided to support this process. Duplication with information set out in charging schedules should also be avoided wherever possible.

- **Identification of general 'integral' infrastructure requirements.** Yes, this is essential to ensure that there is clarity on what the developer will be expected to provide as a standard requirement for a planning policy compliant scheme, rather than funded through IL.
- **Identification of infrastructure/types of infrastructure that are to be funded by the Levy.** Yes, this is also essential in providing clarity regarding the infrastructure that will be brought forward to support development.

MAYOR OF LONDON

- **Prioritisation of infrastructure and how the Levy will be spent** Yes, however it is important that LPAs are given the flexibility to amend priorities to reflect changing circumstances. It will also be important to recognise that IL would only be one source of funding for infrastructure, and that certain infrastructure types have their own sources of funding for necessary enhancement/improvement. Therefore, it should be made clear that not all infrastructure needs identified in the IDS will necessarily be funded by IL.

A flexible infrastructure planning process is also important to enable boroughs to support environmental and net zero ambitions, in particular for water management. The GLA is piloting a sub-regional approach to water and energy strategies. Emerging findings from strategies indicate there may be opportunities for boroughs to collectively fund infrastructure that can unlock growth but that these infrastructure investments may be outside of certain boroughs' boundaries. For example, as a means of addressing flooding concerns, downstream boroughs may be better off contributing to the funding of SUDS interventions in upstream boroughs (to manage flood risk within their borough) than funding downstream SUDS within their borough.

- **Approach to affordable housing including right to require proportion and tenure mix.** It is considered that the IDS needs to be clear about the level or proportion of IL revenue to be spent on affordable housing. This should be linked to the affordable housing need identified by the Local Plan and take account of its affordable housing policies in terms of the amount, size and tenure mix needed, for example. This is in the context of the fundamental concerns expressed elsewhere in this response on the practicality of delivering at least as much affordable housing as under the present system and the wider impacts of using IL for affordable housing delivery on the ability of an LPA to also effectively fund infrastructure.
- **Approach to any discretionary elements for the neighbourhood share** Yes, in the interest of transparency for local communities
- **Proportion for administration** Yes.
- **The anticipated borrowing that will be required to deliver infrastructure** While identifying anticipated borrowing in the IDS is theoretically desirable, this might then constrain the authority in its approach to actual borrowing for projects whose actual costs and wider funding routes are likely to be known only subsequent to identification and inclusion in the IDS. Many infrastructure delivery projects are likely to be delivered by a third-party provider, further complicating the process around identifying borrowing needs.

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**

MAYOR OF LONDON

We are supportive of these measures in principle and would request that the regulations include measures to ensure that regional infrastructure providers such as Transport for London are able to secure contributions to address the impacts of development by improving the capacity of public transport and other infrastructure to support sustainable growth.

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] Please provide a free text response to explain your answer where necessary.

At the Local Plan stage, it is possible to broadly identify the infrastructure required to support the regeneration of the area, including social, transport, utilities, and green infrastructure. This can include identifying locations and anticipated phasing requirements of key infrastructure projects and estimated costs and assumptions on funding sources, based on the best available evidence at the time of submission.

However, the Local Plan should not constitute the only way in which infrastructure can be identified as infrastructure requirements can be fast changing. By way of example, school place planning generally occurs over a shorter timescale than a local plan period would cover, meaning that updates to the IDS would be necessary over the course of the plan period. This would be the case for other types of infrastructure too. The consultation anticipates that:

‘the Infrastructure Delivery Strategy will be an iterative document that can reflect changing circumstances as developments come forward. We will set out a process that allows for updates without further examination, and the engagement that should be undertaken alongside this. We will also set out a process for the circumstances under which a full re-examination is required.’

Although this principle is welcome, it would be useful to have clarity on the scope of updates that could be made without a re-examination being required. Indeed, this scope would need to be sufficiently wide to allow LPAs genuine flexibility. Without this flexibility, there would be a significant risk to timely delivery of infrastructure that is required, based on the most up-to-date circumstances and evidence.

Chapter 5 – Delivering affordable housing

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] Please provide a free text response to explain your answer where necessary.

Strongly disagree. The GLA has previously set out the reasons why it considers that it will not be possible to achieve the same level of affordable housing as is secured through the current process. Given the inclusion of affordable housing and fixed nature of IL, it is likely to result in rates being set which do not secure the same outcomes as at present. Similarly, the increased role of valuation as part of the process is likely to result in additional subjectivity, avoidance and dispute which would have a negative impact the level of affordable housing that can be secured.

There are also a range of other practical challenges and complexities associated with the ‘right to require’ and ‘grant pot’ approach which the GLA have set out previously. This includes the need to design in and integrate affordable housing within a development from

MAYOR OF LONDON

an early stage, whereas, under the current proposals the provisional and final liabilities will not be known until much later in the development process.

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] Please provide a free text response to explain your answer where necessary

We agree in principle, but there would need to be a means to secure the affordable housing as a planning obligation in order to justify the lower infrastructure construction and it is important that there is still a means of addressing site specific impacts and to ensure that the development is sustainable and is granted planning consent.

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

This depends on the scale and circumstances of the site. Schemes providing mainly affordable housing may need to provide onsite infrastructure or other works to enable the development to come forward. For example, cycle parking, playspace, landscaping and public realm improvements were included within the scheme at the site known as Land to the North of Central Middlesex Hospital, Central Way, Park Royal, NW10 7NS (20/0031/FUMOPDC).

For large sites which typically provide a mix of tenures including market housing (which currently provide for infrastructure through S106 and CIL), infrastructure facilities may be required to ensure that the development is planned effectively and sustainably.

For instance, the Leaside Lock development in Bromley-by-Bow, was acquired by an RP (17/000344/FUL, 17/00364/FUL, 19/00554/FUL) and is providing a £5 million S106 contribution towards works to reduce severance caused by the A12, creating an improved environment for pedestrians and cyclists. The S106 agreement for the RP led scheme at Bream Street secured contributions for off-site playspace contributions, wayfinding, and cycle hire, in addition to a CIL payment (which was reduced due to social housing relief).

It is considered that the existing CIL/S106-based system works well for RP-led schemes, enabling a balance to be struck between affordable housing and infrastructure delivery.

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]. Please provide a free text response to explain your answer where necessary.

No. A nationally set upper limit is unlikely to be appropriate and runs the risk of restricting affordable housing delivery in some areas and delivering less than is currently secured. This should be left to the discretion of the local authority.

Chapter 6 – Other areas

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

Yes, however it is important that the monetary amount allocated through the Neighbourhood Share is similar as under the current CIL system and that sufficient funding remains for the delivery of boroughwide and strategic infrastructure.

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. Please provide a free text response to explain your answer where necessary

Given the significant need for affordable housing and strategic infrastructure on brownfield sites the neighbourhood portion should be no more than that currently secured through the CIL regime.

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?

Charging authorities should consult with the community as they do with CIL by making use of existing consultation platforms, including consulting with Neighbourhood Forums where they are established.

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. Please provide a free text response to explain your answer where necessary.

It is important that authorities are resourced sufficiently given the increased administrative burden due to the complexities that would arise when setting up charging schedules, and operating, enforcing and allocating IL. This could be based on a proportion of the value secured, however, the current 5% rate applicable for CIL could result in a substantially higher administrative portion given the inclusion of affordable housing within the IL, which would result in much higher rates being set. To avoid this having a detrimental impact on the level of funding available for affordable housing and infrastructure delivery, additional government funding would be required to introduce and operation the system effectively.

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?

MAYOR OF LONDON

On balance, we agree with exempting residential annexes and extensions. Although this kind of development may result in value uplift, it may be disproportionately onerous on residents and authorities to require contributions for such small-scale development.

There is potential for significant value uplifts to be achieved through self-build developments, which may be bespoke, high-value products. Given that the purpose of IL is to capture land value uplift, it is rational to include self-building housing within scope. This would enable authorities to consider whether it would be viable for such developments to make a contribution when drawing up their charging schedule.

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.

No. We do not consider that additional relief for additional circumstances should apply, noting that publicly funded infrastructure is proposed for exemption from IL through the regulations as per Paragraph 6.18 of the consultation document.

Question 40: To what extent do you agree with our proposed approach to small sites? [Strongly Agree/Agree/Neutral/Disagree/Strongly Disagree/Unsure] Please provide a free text response to explain your answer where necessary.

Disagree. The proposed approach risks decreasing affordable housing delivery that may be achievable on small sites in particular locations. This would be particularly significant where these account for a high proportion of development sites in more constrained locations. Although London Plan policy sets a maximum threshold of 10 or more units for affordable housing provision, boroughs have discretion to apply affordable housing requirements to developments below this threshold through Local Plan policies where this is found to be viable. By restricting local authorities from taking this approach, there is a risk of decreasing the overall provision of new affordable homes within London.

If an LPA identified that smaller sites in their areas tended to be less viable this could be reflected in a variable charging rate, however, this would be better evidenced at a local level, and should not be determined nationally through regulations.

Question 41: What risks will this approach pose, if any, to SME housebuilders, or to the delivery of affordable housing in rural areas? Please provide a free text response using case study examples where appropriate.

As above, IL rates for small sites should be set locally. This would not pose a risk for SME housebuilders because the proposed rates would need to be set at a level that would not make development unviable and be subject to examination.

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

The consultation document proposes that publicly funded infrastructure is exempt from IL (paragraph 6.18) while recognising that S106 obligations may be required to ensure site specific mitigation. We do not consider that additional exemptions would be required through regulations.

MAYOR OF LONDON

Question 43: Do you agree that these enforcement mechanisms will be sufficient to secure Levy payments? [Strongly Agree/Agree/Neutral/Disagree/Strongly Disagree/Unsure] Please provide a free text response to explain your answer where necessary.

Strongly disagree. As per paragraph 6.19, it is proposed that IL liabilities will be listed as local land charges and not removed until the provisional IL liability is discharged. However, the provisional IL liability is calculated and paid before the GDV of the scheme is known. Consequently, a further payment may fall due after the provisional IL liability has been paid, and the liability removed from the local land charges register. It is not clear from the consultation whether such additional sums would also be registered as local land charges as the basis for enforcement or what mechanisms would be available for recovery of unpaid IL charges once development has been completed and sold/occupied. A restriction on occupation until the full payment is made, with removal of the land charge at that stage, would be the only effective mechanism available to enforce this. The developer/ landowner at the time that the development is constructed, or relevant part of it should remain legally liable for the purposes of enforcement, unless this liability has been expressly assumed by another party.

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] Please provide a free text response to explain your answer where necessary

It will be important that a test and learn approach is undertaken to assess the practical implications of introducing IL, including transitional arrangements. However, for the reasons set out above and previously, we do not consider that IL would be more effective in supporting the delivery of sustainable development or capable of achieving at least as much value.

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]. Please provide a free text response to explain your answer where necessary.

Yes. The existing system of S106 contributions and CIL, together with the policies of the London Plan, including the threshold approach to applications, has been successful in increasing the delivery of affordable housing, as well as providing infrastructure and other measures that are necessary to support the delivery of sustainable development. We have significant concerns that IL would reduce this which would have a significant negative impact on people with protected characteristics as defined in section 149 of the Equality Act 2010.