Technical consultation on the Infrastructure Levy

Introduction

The Home Builders Federation (HBF) and its members are grateful to the Department for Levelling Up, Housing and Communities for the opportunity to respond to its technical consultation on the Infrastructure Levy (IL).

The home building industry is sympathetic to efforts to both optimise and streamline developer contributions through the planning system, but sees the ability to draw a direct line between new development and the benefits it can bring for existing and future residents as critical to fostering more positive attitudes towards new build housing.

Having considered the IL proposals in detail, HBF, for the reasons set out below, cautions against such a proposed major overhaul of current arrangements, which, as the consultation material notes, already secures developer contributions worth around £7 billion per annum.

Furthermore, at a time when the industry is already facing unprecedented threats from a combination of economic uncertainty, the increasing burden of regulation, including nutrient neutrality, and a planning process that is might be said to be grinding to halt, HBF and its members are extremely concerned about the detrimental impact such a change could have on an already challenging and costly operating environment.

A system for developer contributions, it has been said before, can either be simple or it can optimise delivery, but it can never satisfy both.

Existing arrangements do go some way towards doing both and, as a practical and pragmatic way forward, HBF would support a ministerial roundtable or summit focused on improving existing Section 106 (S106) Agreements and CIL arrangements.

The remainder of this submission offers some general observations on the principles of the IL before providing responses to the questions set out in the consultation document.

About HBF

HBF is the representative body of the home building industry in England and Wales. Our members are responsible for providing around 80% of all new private homes built in England and Wales and most of our members are small or medium-sized enterprises.

Home Builders Federation
HBF House, 27 Broadwall, London SE1 9PL
Tel: 0207 960 1600
Email: info@hbf.co.uk Website: www.hbf.co.uk Twitter: @HomeBuildersFed

Learning from history

A LUHC Select Committee report on land value capture[1] concluded that:

> *When considering new mechanisms for land value capture, it is vital that we learn the right lessons from the past. It is clear that any new approach should have cross-party support, with the intention of being retained for the long-term and should be simple to administer, without complicated exceptions or viability processes. It will also need to allocate land value increases fairly between central government, local authorities and landowners, without undermining incentives to sell or risk holding up the development process. Consideration should also be given to a mechanism for the redistribution of revenues between high and low-value areas.*

It is against these lessons that proposals for the IL should be assessed.

Existing arrangements

The challenges and opportunities of the proposed IL should also be assessed against those of the existing system for developer contributions.

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

Whilst imperfect, it is important to recognise the benefits that current forms of land value capture are securing. Savills[2] 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 such, the issue with the existing arrangements seems to concern how the money is collected and spent, rather than the quantum of money that is received from house builders.

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 already, in places like Gloucestershire[3] for example, that Community Infrastructure Levy (CIL) being collected by Districts is not being passed to the County for investment in such facilities.

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. For example, in 2021 it was found that local planning authorities in London alone were sitting on at least £1.29bn in unspent developer contributions[4]

---

[1] https://publications.parliament.uk/pa/cm201719/cmselect/cmcomloc/766/766.pdf

[2] https://www.savills.co.uk/research_articles/229130/267514-0

[3] https://glostext.gloucestershire.gov.uk/documents/s86674/Strategic%20Planning.pdf

[4] Property Week, London authorities sitting on £1.29bn of CIL and S106 cash, 12 March 2021

Home Builders Federation
HBF House, 27 Broadwall, London SE1 9PL
Tel: 0207 960 1600
Email: info@hbf.co.uk Website: www.hbf.co.uk Twitter: @HomeBuildersFed

The introduction of 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 Infrastructure Levy would, for the reasons set out below, exacerbate this issue at a time when 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 a mandatory requirement. If it were, it is likely 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.

With regards to S106 Agreements, the consultation material states the proposed levy will "largely sweep away the sometimes-protracted negotiation".

It will be more transparent, as Levy charging schedules will make the expected value of a contribution clear up-front. It will also make it clear to existing and new residents what new infrastructure will accompany development and to developers what infrastructure will be required to make development acceptable. This will ultimately create a more consistent system, which removes unnecessary delay.

While some negotiations can be protracted because of their complex, strategic nature, as the 2020 report on 'The Incidence, Value and Delivery of Planning Obligations and Community Infrastructure Levy in England in 2018-19'[5] identified, 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, and execution of an agreement key milestones within the project timeline.

Some proponents of the IL point to the extent to which S106 Agreements are subsequently renegotiated, often as a result of purported 'overbidding' for land, as a justification for a mandatory, non-negotiable up-front figure. Evidence for such assertions about the scale of this perceived problem would be interesting to see. The aforementioned report identified that most LPAs received only a small number (four or fewer) of requests to amend a S106 Agreement each year and Planning Practice Guidance has been amended to make clear that where viability assessments are used to inform decision making under no circumstances will the price paid for land be a relevant justification for failing to accord with relevant policies in the plan.

Avoidable delays could be reduced by, for example, reducing reliance on locum solicitors that start each agreement from scratch by adding greater internal LPA resource 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 accessible policies and effective monitoring arrangements, perhaps expressed by way of a development plan document on developer contributions.

[5]https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/907203/The_Value_and_Incidence_of_Developer_Contributions_in_England_201819.pdf

Home Builders Federation
HBF House, 27 Broadwall, London SE1 9PL
Tel: 0207 960 1600
Email: info@hbf.co.uk Website: www.hbf.co.uk Twitter: @HomeBuildersFed

It was reported in April 2023[6], 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 what is being collected, and more how those contributions are collected and spent.

Additional funds

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

The present system includes relatively high thresholds for developer contributions, significant 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.

Since the IL proposals will operate as a fixed charge it will be impossible to set an IL rate (or set of rates, see below) that will not either render otherwise deliverable sites unviable, or result in a significant volume of sites paying less IL than they could deliver. The output from the IL will, therefore, and as a point of principle, inevitably be lower than the amounts of affordable housing and CIL that could be delivered by the current system. HBF is aware of work led by BNP Paribas and shared with government by way of the RICS IL workshops that illustrates this point.

Affordable housing

In a letter to the Secretary of State in February 2023[7] the National Housing Federation and a number of other bodies in the planning and development sectors highlighted that almost 50% of all new affordable housing is funded through S106 Agreements and that, under the levy as proposed, it is possible that developer contributions could be diverted away from delivering affordable housing to other unspecified forms of infrastructure or local authority 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 to integrate it as part of a development rather than by contribution. The levy as proposed would deviate from this important placemaking principle.

Under the IL proposals as drafted neither the builder nor the provider of the affordable homes will know how much of the latter the LPA will be able to secure until the scheme is at an advanced stage of preparation and possibly even construction and so the affordable element will need to be shoe-horned into a scheme.

Frontloading

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.

[6]https://www.northantslive.news/news/northamptonshire-news/councils-planning-service-no-way-8323143

[7]https://www.housing.org.uk/news-and-blogs/news/joint-letter-to-the-secretary-of-state-on-infrastructure-levy/

Home Builders Federation
HBF House, 27 Broadwall, London SE1 9PL
Tel: 0207 960 1600
Email: info@hbf.co.uk Website: www.hbf.co.uk Twitter: @HomeBuildersFed

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 need to be rates in the thousands of pounds for the proposed levy 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 and benchmark land values and different costs and revenues and margins. On that basis it does seem outlandish that the number of rates required could run into the dozens.

Regional inequality

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, LPAs 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”.

The land market

Development of any nature is highly complex and often relies upon contractual arrangements with landowners that agreed at the very beginning of the process that can take many years to complete. These agreements are similarly complex and often contain provisions around developer contributions, minimum land values and tax freezer provisions (whereby landowners are able to delay the sale of their land if the tax levels exceed an agreed rate).

The move to a tax on a percentage share of the gross development value at the end of a project will, risk in the short term, undermine the promotion and delivery of sites that are subject to an existing agreement and risks, in the longer term, and as the Liverpool Report highlights, deterring owners from releasing land for these types of long-term strategic developments.

Control and delivery of infrastructure

As will be a common theme throughout HBF responses to the consultation questions, the purchase of land by builders and subsequent delivery of new homes will be significantly impacted by the uncertainty over infrastructure delivery that the proposals would introduce. Underpinning this assertion are two key points. Firstly, the likely reticence on the part of LPAs to borrow against future receipts, the value of which is uncertain. Secondly, the fundamental shift required in terms of resources, skills and experience within LPA to move from the status quo towards their ability LPAs to drive and deliver new infrastructure.

The ability to deliver on commitments made to communities and key stakeholders is fundamental to the reputation of the homebuilding industry.

Home Builders Federation
HBF House, 27 Broadwall, London SE1 9PL
Tel: 0207 960 1600
Email: info@hbf.co.uk Website: www.hbf.co.uk Twitter: @HomeBuildersFed

Test & Learn

It is noted that the proposed levy would be introduced over an 'extended period' and through a 'test and learn' approach, which would see the proposed levy introduced in a representative minority of local authorities in the first instance (that would presumably be afforded the not insignificant resource likely to be required to commit to such an undertaking). This sounds sensible in principle, but the impact on inward investment in that representative minority would need to be closely monitored because an even more uncertain policy environment in those places may be detrimental.

Summary

Governments are often criticised for taking a short-term approach to policy formulation and so, by extension, anybody who does should be open to something of this long-term, potentially transformative nature. That is entirely fair, and the IL could have considerable merit, but it is also legitimate to query the fundamental claims that the IL will deliver more funds for communities and at least existing levels of affordable housing.

HBF suggests that the perceived deficiencies with the present S106 Agreement and CIL regimes would be dwarfed by the vast operational, structural and procedural challenges that the IL would introduce, and that the time, cost and effort required in pursuit of the latter would be better directed to remedying the former.

As the DLUHC Select Committee Report referred to above concluded:

"It is clear that any new approach should have cross-party support, with the intention of being retained for the long-term and should be simple to administer, without complicated exceptions or viability processes."

Based upon the exploration of only the key matters of principle above, it is suggested that the proposals would not meet those criteria.

It is also pertinent to highlight that a CIL review group[8] was established by the former Communities Secretary, Greg Clark and the former Minister of Housing and Planning, Brandon Lewis, in November 2015 to 'assess the extent to which CIL does or can provide an effective mechanism for funding infrastructure, and to recommend changes that would improve its operation in support of the Government's wider housing and growth objectives."

It was observed that:

CIL has not provided the universal and therefore 'fair for all' approach to developer contributions that was originally envisaged. For various reasons, many of them sound and usually to do with development viability, a number of local authorities, many of them in the north of England, have decided not to introduce a CIL and this has resulted in a patchwork of CIL and non-CIL authorities across the country and a continuing, more extensive reliance on Section 106 than originally envisaged. That means many smaller developments which could afford to pay something towards infrastructure are getting away without making any contribution.

[8]https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/589637/CIL_REPORT_2016.pdf

Home Builders Federation
HBF House, 27 Broadwall, London SE1 9PL
Tel: 0207 960 1600
Email: info@hbf.co.uk Website: www.hbf.co.uk Twitter: @HomeBuildersFed

That CIL review group recommended that CIL and Section 106 Agreements be replaced by a Local Infrastructure Tariff, with a Strategic Infrastructure Tariff at a HMA or combined authority geography. If reform in the way that infrastructure is funded is to be pursued, then this could be an avenue to explore.

Home Builders Federation
HBF House, 27 Broadwall, London SE1 9PL
Tel: 0207 960 1600
Email: info@hbf.co.uk Website: www.hbf.co.uk Twitter: @HomeBuildersFed

Consultation Responses

Chapter 1 – Fundamental Design Choices

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

HBF would support the retention of the CIL definition of 'development' in its entirety.

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. HBF would be wary of conferring sole responsibility for infrastructure delivery on local planning authorities (LPAs) for fear of delaying delivery of the key elements that come together to make a successful place and in so doing jeopardising the overall coherence and quality of new development.

The key for builders is control and certainty over delivery, which applies not just to infrastructure with the red line of a site, but also enabling infrastructure improvements that might be required off-site.

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]

The types of infrastructure that could be considered integral on any given site will depend upon size, nature, and location of a site, and could very well change over time, which would make it difficult for an Infrastructure Delivery Strategy (IDS) to respond to changing circumstances.

On this basis, some kind of combination of options B and C could be helpful, whereby nationally-set policies and guidance set out the parameters of what constitutes integral infrastructure, with site-specific requirements and more detailed information being set out by LPAs in an IDS.

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?

No. The IL will never be able to meet the full cost of infrastructure provision within a local authority and deficiencies within current arrangements will be exacerbated under such arrangements.

If the IL is to make a meaningful contribution towards infrastructure provision it is important that the types of infrastructure that it is expected to fund are both clear and tightly defined.

Breaking the link between development and infrastructure delivery, which CIL has already started to do, will do nothing to reassure local communities that new developments will be accompanied by the infrastructure required to support them.

Home Builders Federation
HBF House, 27 Broadwall, London SE1 9PL
Tel: 0207 960 1600
Email: info@hbf.co.uk Website: www.hbf.co.uk Twitter: @HomeBuildersFed

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? Should expectations be set through regulations or policy?

HBF contends that affordable housing should be excluded from an IL and delivered by way of S106 Agreements in line with the current approach.

The proposed inclusion of affordable housing as an integral component of a levy would become non-negotiable and so remove the current level of flexibility afforded to LPAs to apply planning judgment where schemes face viability challenges. LPAs can presently weigh the benefits of scheme and compliance with the local plan as a whole against a below policy level of affordable housing provision, or a change to the preferred mix and tenure of it, in order to support the delivery of a viable development. Where below policy provision is accepted a viability review mechanism can be attached to the planning permission in case overall economic conditions improve.

In contrast the proposed approach would prioritise affordable housing above infrastructure and place an unreasonable burden on viability and therefore the delivery of both market and affordable housing.

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

HBF contends that any funds raised by way of a levy should only be spent on infrastructure required to facilitate development.

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

Further to the point above about the type of infrastructure required on any given site depending upon its size, nature, and location, the thresholds for the 'infrastructure in-kind' routeway should be set by a LPAs as part of the rate-setting process, cognisant of the priority areas and in parallel with the testing of viability and delivery at a local plan examination.

LPAs could be given the discretion to determine between sites that are subject to an IL and those that deliver infrastructure on-site in circumstances where provision for it needs to be planned for from the outset.

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?

Even under the 'core-levy' routeway, the vast majority of residential development sites will still require S106 Agreements to deal with, for example, First Homes, Biodiversity Net Gain and water and nutrient neutrality solutions, as well as the myriad other obligations that are regularly sought such as employment and training strategies or commuted sums for the management of play areas.

Planning obligations would also still be required to support the delivery of affordable housing to ensure flexibility (via staircasing and cascade mechanisms) such that affordable housing can continue to meet the needs of the local community.

There is very little prospect that the IL as proposed will reduce the need for or time taken by negotiations over such obligations.

Home Builders Federation
HBF House, 27 Broadwall, London SE1 9PL
Tel: 0207 960 1600
Email: info@hbf.co.uk Website: www.hbf.co.uk Twitter: @HomeBuildersFed

HBF understands that evidence will be submitted in response to this consultation by other parties that show that, in practice, the IL is only achievable for greenfield sites where existing use values are both high and relatively uniform, and the uplift arising from development can be readily established.

Chapter 2 – Levy Rates and Minimum Thresholds

9. 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?

An IL should be extended to residential dwellings created through permitted development rights if it is to make both the optimum possible contribution and to ensure that residents of new development are able to access appropriate social and amenity facilities.

Minor householder developments should be exempted from an IL.

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?

It is suggested that if a national maximum rate is to be introduced to protect the viability of permitted development schemes then, based on the evidence provided, similar mechanisms should be put in place for all other types of potentially constrained developments, such as contaminated brownfield sites.

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?

It is respectfully suggested that no IL is capable of being sufficiently nuanced to address the myriad site-specific viability conditions that are especially prevalent in urban areas. As stated above, the proposed levy would require a multi-dimensional triangulation of charging rates to account for every single type of development of every single possible scale (e.g. building heights) in every single part of an authority with different existing and benchmark land values and different costs and revenues and margins. Again, on that basis it does seem outlandish that the number of rates required could run into the dozens, but still with the significant risk that large amounts of potential development land could be rendered unviable.

That being said, HBF could support a general 'safety valve' provision that would allow a general reduction in IL rates in the event that the proposed liability would render a scheme unviable.

Home Builders Federation
HBF House, 27 Broadwall, London SE1 9PL
Tel: 0207 960 1600
Email: info@hbf.co.uk Website: www.hbf.co.uk Twitter: @HomeBuildersFed

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

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

Charging the Levy on final sale GDV of a scheme

This proposal introduces a large element of uncertainty into the development process for all parties involved because until the point of sale neither the builder nor the LPA can be certain of the extent of IL liability.

It is entirely plausible that, under the proposed arrangements, a development at the margin of viability due to increasing development costs would still trigger a levy payment where GDV exceeds the threshold. That this calculation applies at the point of sale, after the builder has committed to the investment required to bring the project forward, could legitimately be described as overly putative because it will not be possible to accurately reflect the levy at the point of land purchase.

A fixed and predictable regime of developer contributions can be factored into land contracts from the very outset. Builders of all sizes will need to be extremely cautious about IL liabilities in their offers to landowners who, without a clear motivation to bring land forward for development will be inclined not to. SME builders especially will find that the uncertainty over a future rate of return will make it harder to access finance. LPAs for their part will be uncertain as to the level of receipt to be received from any particular scheme at a time when infrastructure planning should be going on in parallel.

Further it has been suggested that, as conceived, the IL could act as a check on the quality of new homes. By using average notional costs to set a levy, but actual sales prices to collect it, it could act penalise a builder that sought to spend more than the average on the quality of design, build or placemaking, which would be inconsistent with the rightful drive for improvement in these areas.

The use of different Levy rates and minimum thresholds on different development uses and typologies

An IL would have to incorporate different IL rates and minimum thresholds for different development uses and typologies and, in order not to make any development of any type in any part of the administrative area unviable, the LPA would need to undertake detailed viability testing of every single typology. This would make for an unavoidably complex and unwieldy charging schedule.

As a result, rate-setting will be inevitably far more resource-intensive and time consuming for all-concerned, which is a point made by University of Liverpool that accompanies the consultation when stating that "complexity and negotiations will become part of levy practice, especially at the rate setting stage, and generate a certain amount of uncertainty about outcomes."

Home Builders Federation
HBF House, 27 Broadwall, London SE1 9PL
Tel: 0207 960 1600
Email: info@hbf.co.uk Website: www.hbf.co.uk Twitter: @HomeBuildersFed

Ability for local authorities to set 'stepped' Levy rates

HBF would contend that 'stepped' levy rates could introduce perverse incentives, not least a glut of planning applications prior to rate changes, but when rates are eventually increased some sites would inevitably fall into an 'unviable' position.

Separate Levy rates for thresholds for existing floorspace that is subject to change of use, and floorspace that is demolished and replaced

This would seem sensible given that the cost profiles between the two could vary markedly.

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

Please see above.

Chapter 3 – Charging and paying the levy

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

The indicative liability, for which the applicant is being asked to assume liability at the first stage of the process, could well bear no resemblance to the actual liability. Values are often very site-specific and driven by a range of factors that cannot be captured by a Charging Schedule. They are prone to move quickly, and a document prepared even in the relatively-recent past will always fail to reflect current circumstances.

Indicative liability would, however, be registered as a land charge, which at this stage of the process has the potential to mislead or deter prospective purchasers or lenders. It could and should be based on either a more accurate valuation or left until the provisional liability has been calculated.

It should also be noted that at the point at which, post-decision, a provisional liability calculation is made the price paid for affordable housing will need to be determined by way of a tender process rather than being based on historic data.

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

A levy on 'net sales area' as opposed to gross internal area would avoid charging for floorspace that is not generating a value.

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?

It is highly likely that disputes over the valuation of a scheme will delay the payment of the provisional levy. This would be further complicated where infrastructure is provided as a deductible item and where schemes are to be delivered in multiple phases.

Paying a proportion of the provisional levy on a phased basis would have to be reflected in the charge, adding risk and uncertainty for the builder.

Further uncertainty would be added because, whilst the charge would be removed on payment of the provisional levy, there is no mechanism or guarantee requiring the charging authority to actually deliver the required infrastructure within a specific time frame. Consideration must, therefore, be given to step-in rights and repayment mechanisms to recover the levy monies in such instances.

Home Builders Federation
HBF House, 27 Broadwall, London SE1 9PL
Tel: 0207 960 1600
Email: info@hbf.co.uk Website: www.hbf.co.uk Twitter: @HomeBuildersFed

Taken together, there is a significant risk that the uncertainty and complexity generated by the IL would impact both the delivery of new homes being impacted and confidence of prospective purchasers in actually buying one.

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

It may be prudent for a local land charge to be registered once accurate information is available and removed upon payment.

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?

Caution should be applied in affording a LPA to request payment before the ability of a builder to test the actual impact of a IL liability on the viability of a scheme once rates have been set.

Further, since not all LPAs would adopt the same approach, such a provision would introduce further uncertainty on cashflows and subsequent disruption to ROCE (return on capital employed), which is a key financial metric for all builders, but would be especially impactful upon SMEs.

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 see above.

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?

As stated, a valuation of the GDV of a scheme would be required before a land charge is registered against a property to ensure that the information about liabilities can be relied upon by third parties. This would place a considerable burden on all concerned, not least the pool of qualified valuation experts operating in the marketplace presently.

More fundamentally, however, any levy system can only be partially responsive to market conditions in that levy liabilities will reduce if GDV falls, unresponsive to changes in costs (which can have an equal or greater impact on viability than variations in sales values). There is a clear and compelling risk that the introduction of this inherent uncertainty and additional risk will deter many potential entrants to the development market and may act to persuade those already in the market to pursue ventures with more stable returns.

Chapter 4 – Delivering infrastructure

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

Any borrowing by LPAs would be against an uncertain future receipt, which would be an unattractive proposition for both LPAs and lenders alike (as opposed to borrowing against future S106 Agreement and CIL revenues that would be more certain).

Levy receipts could for myriad reasons be lower than anticipated at the point a loan is taken out, leaving a LPA with a debt liability it may be unable to meet.

Home Builders Federation
HBF House, 27 Broadwall, London SE1 9PL
Tel: 0207 960 1600
Email: info@hbf.co.uk Website: www.hbf.co.uk Twitter: @HomeBuildersFed

This would fundamentally undermine the purchase of land by builders and the subsequent delivery of new because inherent uncertainty over infrastructure delivery.

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?

It is presently unlawful for planning conditions to be used to secure financial payments, but if LPAs are allowed to set a threshold for the 'payment in-kind' routeway for a S106 Agreement that would require on-site provision or delivery of infrastructure within agreed timescales then this provision would not be required.

Any IL would, however, be similarly subject to the vagaries of the market and so it would be similarly unreasonable to demand upfront payments when the actual amount due will not be known for several years. If this is pursued then any upfront payment should be limited to a proportion of the estimated liability, with any balance payable only when a final payment has been established.

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

Present arrangements are held to be working reasonably in the context of a general lack of local government resourcing and fragmented, siloed delivery arrangements. Many of the concerns about delay, which underpin the justification for the IL, could be resolved by tacking the avoidable delays set out above.

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?

On the basis that, as is understood, an IDS will not be binding on a LPA, it is difficult to see how they would provide transparency and certainty on how the Levy will be spent over and above present arrangements for transparency over existing S106 Agreement and CIL payments (which themselves could be improved significantly).

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

An IDS would have to be developed alongside a local plan in order to be defined by a LPA's type and scale of long-term growth and assessments of the viability and delivery thereof.

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

As stated above, if an IDS is formally incorporated into a local plan process then the public would have multiple opportunities to be involved and to see the extent to which infrastructure provision is so reliant on new development.

Home Builders Federation
HBF House, 27 Broadwall, London SE1 9PL
Tel: 0207 960 1600
Email: info@hbf.co.uk Website: www.hbf.co.uk Twitter: @HomeBuildersFed

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

As well as all of the above, there would also be merit in an IDS apportioning responsibility for the delivery of key infrastructure alongside project plans for doing so.

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

Given that the allocation of IL funding is likely to become even more contentious when the ability for County Councils to 'top up' CIL funding by way of S106 Agreements is removed, the introduction of a standardised allocation procedure across all two-tier authority areas would be helpful.

All of the above mechanisms are likely to assist in this, but many of the problems that County Councils are experiencing result from disagreements over funding priorities with LPAs, particularly on cross boundary matters, a greater-than-local strategic planning framework that brings all relevant actors together would assist even more.

Home Builders Federation
HBF House, 27 Broadwall, London SE1 9PL
Tel: 0207 960 1600
Email: info@hbf.co.uk Website: www.hbf.co.uk Twitter: @HomeBuildersFed

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

A local plan is the best opportunity to plan effectively for local infrastructure requirements whilst recognising that market conditions and so extent to which sites can generate value anticipated at the point of plan adoption can and will change over the life of a plan period. Further, even since the relatively-recent focus on whole-plan viability assessment, estimating the cost of requirements so far in advance of development coming forward and without the benefit of detailed design work means that costs can only be estimations. An ability, therefore, to revisit site-specific viability at the point of a planning application is a fundamental planning requirement.

A greater-than-local strategic planning framework would recreate opportunities to plan effectively for greater-than-local infrastructure requirements.

Chapter 5 – Delivering affordable housing

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?

As stated above, it would be interesting to see evidence to support the assertions that affordable housing contributions are routinely being negotiated down on viability grounds.

The consultation is suggesting that a system based on non-site-specific thresholds and rates per square metre will deliver the same as a system in which affordable housing is determined on the basis of detailed scheme-specific circumstances. For the reasons set out above HBF fundamentally challenges this assertion.

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?

HBF would support a discounted IL rate on 100% affordable schemes provided that the planning system provides a continuous supply of land of all sizes the market and SME builders, for example, are not a disadvantage when bidding for land against affordable providers.

32. How much infrastructure is normally delivered alongside registered provider-led schemes in the existing system?

It is difficult to draw a distinction between infrastructure delivered by registered provider-led schemes and market-led schemes because both will be policy compliant and respond to site-specific circumstances.

33. As per paragraph 5.13, do you think that an upper limit of where the 'right to require' could be set should be introduced by the Government? Alternatively, do you think where the 'right to require' is set should be left to the discretion of the local authority?

The balance that needs to be struck between national standards and local discretion could be struck by providing LPAs with clear guidelines about how to go about setting upper limits.

That being said, under present arrangements affordable housing is delivered on-site through a direct commercial arrangement between a builder and a registered provider, which is separate from financial contributions collected through CIL. A single levy to provide for both affordable housing and infrastructure will inevitably give rise to disputes about the priority between the two.

Home Builders Federation
HBF House, 27 Broadwall, London SE1 9PL
Tel: 0207 960 1600
Email: info@hbf.co.uk Website: www.hbf.co.uk Twitter: @HomeBuildersFed

Chapter 6 – Other Areas

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

The Neighbourhood Share was introduced to increase local support for new development schemes. If it is being shown to be serving this purpose, and providing value for money, then its retention should be supported for the delivery of demonstrably important local projects.

35. In calculating the value of the Neighbourhood Share, do you think this should:

    - reflect the amount secured under CIL in parished areas (noting this will be a smaller proportion of total revenues)
    - be higher than this equivalent amount
    - be lower than this equivalent amount
    - other (please specify) or
    - unsure

A local plan would be an appropriate forum to calculate the value of local share given the need to balance strategic and local infrastructure priorities.

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?

If a neighbourhood forum can be formed to create a neighbourhood plan then it can take on responsibility for the Neighbourhood Share.

37. Should the administrative portion for the new Levy

    - reflect the 5% level which exists under CIL
    - be higher than this equivalent amount
    - be lower than this equivalent amount
    - other (please specify) or
    - unsure

Given the not insignificant uncertainties around how much administrative work will be required to manage the new system it may be prudent for this to form part of an IDS rather than being set out in regulations, but it should be expected that the costs of administering an IL will be considerably higher than the costs of administering the current system.

Home Builders Federation
HBF House, 27 Broadwall, London SE1 9PL
Tel: 0207 960 1600
Email: info@hbf.co.uk Website: www.hbf.co.uk Twitter: @HomeBuildersFed

38. Applicants can apply for mandatory or discretionary relief for social housing under CIL. Q31 seeks views on exempting affordable housing from the Levy. This question seeks views on retaining other countrywide exemptions. How strongly do you agree the following should be retained:

    - residential annexes and extensions
    - self-build housing

    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?

Given the difficulties that individual householders have when navigating the CIL system, which will not become any more straightforward, the retention of these reliefs could be sensible.

It is noted that the proposals as drafted do not exempt the conversation of heritage assets, which could be detrimental to their if paying the levy contributed to costs over and above GDV.

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?

Again, everybody requires access to the same social infrastructure and amenity facilities and, whilst there is a strong case for not over-burdening such schemes with financial obligations, there is an equally strong case that to ensure that a LPA can meet the needs of all of its communities. Subsidies for such technologies in the short term and before they become mandatory might be better coming from elsewhere.

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

The need to reconcile the fact that everybody requires access to the same social infrastructure and amenity facilities rubs against the burdens that SME builders in particular face when navigating an already byzantine planning system.

On the one hand, a higher threshold for what constitutes minor development, and perhaps even a general IL rebate for SMEs is a better way of tackling the disproportionate financial burdens that they face. On the other though, all SME builders would recognise the responsibility to contribute towards infrastructure. Ultimately this circle is squared by a clear, consistent regulatory regime that makes sites of all sizes available for development, which in turn makes the case to improve current arrangements rather than add more uncertainty and complexity.

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

Please see above.

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

Any development that is to be funded in whole or in part through IL receipts should be exempt from the levy itself.

Home Builders Federation
HBF House, 27 Broadwall, London SE1 9PL
Tel: 0207 960 1600
Email: info@hbf.co.uk Website: www.hbf.co.uk Twitter: @HomeBuildersFed

43. 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 the kind of collaboration that will be necessary if the IL is to operate effectively.

There are no mechanisms presently for addressing rapid cost inflation, the discovery of abnormal costs on site, or the erosion of the minimum threshold over time (due to differences in inflation rates or the time lag between uprating).

There is a real risk that imposing a stop notice or placing limits on occupations prior to payment could well force developer insolvencies, which simply result in the levy not being paid at all or being paid at a lower rate than would otherwise have been the case.

There are also no incentives in the regulations, or indeed any rights of recourse for developers, in the event that LPAs are not processing applications promptly or are failing to address or remedy issues that have arisen because of mistakes made during the rate-setting process, or are simply refusing to issue a rebate that would otherwise be due as a result of the final adjusted payment.

HBF would support the inclusion of some kind of dispute resolution mechanism in the regulations to resolve these types of issues before enforcement powers, and the possibility of judicial review, can be used.

Chapter 7 – Introducing the Levy

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

Further to points made above the approach to 'test and learn', HBF would question how the IL and the IDS would sit alongside a move to a 30-month local plan process, which as highlighted above, is considered critical.

Ultimately the need for such a long transitional arrangement is testament to the scale of disruption that the IL would represent, but if the 'test and learn' approach is adopted it will be important that the LPAs involved are representative of the entire country.

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?

HBF offers no comment.

Home Builders Federation
HBF House, 27 Broadwall, London SE1 9PL
Tel: 0207 960 1600
Email: info@hbf.co.uk Website: www.hbf.co.uk Twitter: @HomeBuildersFed