

Technical consultation on the Infrastructure Levy

NHF submission to the Department for Levelling Up, Housing and Communities consultation

9 June 2023

Introduction

The National Housing Federation (NHF) is the voice of housing associations in England. We represent almost 800 housing associations that own and manage more than two and a half million homes for around six million people. Our members also provide vital care, support and community services.

Housing associations represent an incredibly diverse sector of independent, not-for-profit organisations driven by their social purpose – to ensure everyone in the country can live in a good quality and safe home that they can afford.

The NHF has [consistently raised concerns](#) about the ability of the Infrastructure Levy to deliver affordable housing at the levels the country needs. We believe there are insufficient protections for affordable housing both in the primary legislation, but also in the proposals contained within this consultation.

We have not responded to every question in the consultation, focussing instead on some key areas of concern for our members and the stakeholders we work with. However, the structure of this document mirrors that of the questionnaire.

Please contact [Marie Chadwick, Policy Leader](#) for more information.

Summary

Developer contributions currently play a vital role in delivering affordable and social housing. Section 106 contributions alone currently accounts for 47.3% of all affordable homes from 2021-2022, representing 12% of all new homes delivered annually. While there is clear scope to reform and improve developer contributions, they are nonetheless responsible for a huge proportion of new affordable and social homes.

The sector has particular concerns about the impact on affordable housing delivery that will come with new flexibilities on how Levy receipts can be spent by local authorities. Affordable housing provision should be based on objectively assessed need, not on competing political priorities, and the NHF is concerned that under these proposals local authorities will even have the chance to divert funds away from infrastructure altogether.

The NHF remains unconvinced that the Infrastructure Levy can deliver a greater share of the uplift in value associated with development to local authorities. This is particularly the case in areas where land values are lower, and for development on brownfield sites which the government has stressed should be prioritised in recent changes to the National Planning Policy Framework (NPPF).

Proposals to expand the types of development where contributions will be required are welcomed by the sector. The effectiveness of other fundamental design choices is still not clear.

The NHF supports the introduction of a “Right to Require” for on-site affordable housing delivery but would go further and implement a minimum floor on this right for a local authority with unmet housing need.

The NHF welcomes the approach set out in the consultation in relation to the treatment of 100% or high-proportion affordable housing developments being exempt from paying the Levy.

The aspiration to streamline the process and speed up delivery of development is a welcome one, but these proposals do not appear to do that. We are concerned about the ability for local planning authorities to deliver such large-scale changes alongside an existing planning system already in crisis. Delays are a feature of every stage of planning in England at the moment, from the consideration of applications through to dealing with appeals via the Planning Inspectorate.

We welcome the government’s “test and learn” approach, and believe is the only real way to objectively decide if the Infrastructure Levy system is appropriate.

1. Fundamental design choices

The NHF welcomes the expansion in the scope of what is considered development for the purposes of contributions under the Infrastructure Levy. We encourage the

government to bring forward this policy change as soon as possible by also amending the existing regulations on developer contributions rather than waiting for the rollout of any new system.

In principal, a change towards a system where integral infrastructure is provided by those developing the land, rather than being secured via legal agreement could make things easier. However, we have concerns about how it might work in practice and set out further details under section 4: “Delivering infrastructure” below.

The NHF is extremely concerned with proposals to allow local authorities the flexibility to spend Levy receipts on non-infrastructure items, including revenue-based spending. With local government facing extreme financial pressures, there is a real danger that Levy receipts will be syphoned off to support other things. We do not support this proposal and would advocate for the retention of the current rules around the Community Infrastructure Levy (CIL) and Section 106 contributions.

As the government recognises in this consultation, developer contributions are “essential to making new development acceptable”. Allowing funding to be diverted for priorities including, but not limited to, [“social care, subsidised or free childcare schemes”](#) as set out in section 1.33 of the consultation risks political priorities unrelated to development being given preference at the expense of essential infrastructure. If the government is minded to allow local authorities flexibility in how they spend Levy receipts, then there must be an expectation for them to prioritise affordable housing and infrastructure needs above anything else. The NHF has consistently advocated for this priority to be set out in primary legislation and failing that, this expectation must be defined in regulations to protect affordable housing delivery.

Under the existing system, a relatively high proportion of overall developer contributions are spent on affordable housing. According to [research commissioned by the Ministry of Housing, Communities and Local Government in 2020](#), 78% of Section 106 funds were spent on affordable housing in 2018/19. Introducing broad flexibilities risk significantly lowering the amount of contributions allocation towards affordable housing. This would be incompatible with the government’s repeated commitment to deliver “at least as much, if not more” affordable housing via the Infrastructure Levy as under the present system. Achieving an equal level of delivery via the Infrastructure Levy would require ring-fencing a proportion of developer contributions for affordable housing, or setting baseline levels for delivery in primary legislation. It is concerning that no such protections have been introduced.

In relation to the three routeways proposed, it remains unclear as to what mechanism will be used to secure essential agreements other than infrastructure. Proposed Delivery Agreements appear to capture the “integral” requirements alongside design codes but there is no apparent process for ensuring other provisions currently secured through Section 106 agreements – for example, ensuring that affordable housing remains so in perpetuity and can be allocated according to local connection in rural areas. Further clarification on this issue would be welcomed.

2. Levy rates and minimum thresholds

As previously set out, the NHF welcomes the move to bring permitted development rights which create new dwellings into the scope of the Infrastructure Levy, especially where office to residential conversions take place.

According to [analysis undertaken by the Local Government Association](#), during the period 2015-2020, the lack of developer contributions under permitted development rights potentially led to the loss of 13,540 affordable homes across England. Their research also pointed to a reduction in contributions for infrastructure other than affordable housing too. We support capturing the, sometimes significant, uplift in value of these conversions.

Whilst recognising that it does not form part of this consultation, the NHF urges the government not to consider permitted development rights only in relation to developer contributions, but to also undertake a wider review of regulations in this area. Compliance with space and light standards in office to residential conversions is extremely important, as is ensuring developments are of high quality and consideration has been given to their location in relation to essential services.

We are keen to engage further with the government on issues related to site-specific viability for brownfield developments. In many cases several different challenges can come together on a site and the consultation document has no apparent mechanism to deal with situations where a development does not fit into the pre-defined categories for an offset. This will be particularly important for our members delivering regeneration programmes.

The NHF agrees that moving to a developer contribution system based on Gross Development Value (GDV) could in some cases capture additional monies for local

authorities. However, there remains a lot of uncertainty in circumstances where the GDV is higher than anticipated and how that will be managed in relation to affordable housing and creating mixed and balanced communities. The right to require will not capture any increase in GDV nor the number of extra affordable homes which should be provided. The government must therefore consider regulations which require a corresponding uplift in value to be ring-fenced for affordable housing at the same percentage as the right to require. Our members also have concerns about situations where the final GDV on a development is less than expected and we would like to work with the government when looking at regulations to ensure financial contributions for affordable housing beyond the right to require are not sacrificed in order that local authorities keep monies for other infrastructure.

3. Charging and paying the Levy

The NHF has real concerns about the effectiveness of the Infrastructure Levy to deliver the government's aims of simplifying the developer contribution process and extracting more of the uplift in value after development for local authorities.

The pressures facing local planning authorities are well documented, with [recent research from the Royal Town Planning Institute](#) finding that a quarter of planners have left the public sector between 2013 and 2020, and 82% of local authorities have experienced difficulties in recruiting planners in the last 12 months.

Housing associations across the country have reported delays in getting permission for development and similar problems are reported with the Planning Inspectorate. Nothing in the proposals set out in this consultation appear to reduce the amount of documentation that local planning authorities will be expected to produce and although, in the main, negotiations between them and developers will be front-loaded into the Local Plan process, they will not be removed entirely. We believe that the rate-setting process will be complicated and time-consuming due to all the factors which will need to be considered, including: ensuring a decent return for developers, an acceptable return for landowners in order that they bring their land to market, and how to account for build costs within a local authority area which has very different landscapes and markets. Accounting for build cost inflation will also be incredibly important.

It is also unclear from the consultation how affordable housing will interact with the charging schedule, both in terms of size and tenure.

In relation to the payment process of the Infrastructure Levy, the NHF understands the concerns of local government around having the money to deliver infrastructure as early as possible, as well as the hesitation around borrowing against assumed receipts. As per question 15 in the consultation document, we believe the government should look at flexibility in the payment schedule to allow developers to pay instalments of their Levy liability from the point that their indicative liability is calculated rather than just at post development, pre-occupation stage. In a similar way to how build-out rates are improved with the completion of on-site affordable housing, cash flow for SME developers could be improved by allowing staged payments like those which exist under the CIL regime. However, we would caution against allowing local planning authorities to mandate an earlier payment.

Imposing a land charge at the beginning of development and removing it once Levy liabilities are paid is, on the face of it, a good way of guaranteeing payment. However, this system relies on the smooth operation of the Land Registry and delays in getting things processed are commonplace. The government must ensure that the Land Registry is adequately resourced to deal with this new burden.

4. Delivering infrastructure

The NHF supports giving local authorities the ability to borrow against expected Levy receipts to support the prompt delivery of infrastructure. We also advocate retaining CIL regulations which allow developers the flexibility to pay contributions in instalments in advance of their liability being due in order to manage their cash flow.

We have concerns about proposals to give local authorities the ability to require upfront payment towards infrastructure as a condition for granting planning permission. It will be important for regulations to make clear both what sort of infrastructure can be required in this way, and what is classed as “upfront”. We look forward to more clarity from the government on this.

Whilst we appreciate the desire to streamline the process and reduce the burden on local government, our view is that all of the Infrastructure Delivery Strategy (IDS) should form part of the examination. This is to ensure that decisions around spending on affordable housing and the Right to Require are made based on rigorous evidence of housing need in a local authority area.

Delivering affordable housing

The NHF has consistently raised concerns about the ability of the Infrastructure Levy to deliver affordable housing at the levels the country needs. We believe there are insufficient protections for affordable housing both in the primary legislation, but also in the proposals contained within this consultation.

During this process our members have been consistently told that issues to do with the primary legislation are not ones that can be raised in the consultation, yet it is impossible to properly respond to the document presented without considering the flaws in the legislation. It is also notable that when these concerns have been raised during Committee Stage scrutiny of the primary legislation, Ministers have made [direct reference](#) to the consultation process as a means of resolving them.

The government maintains the view that the primary legislation needs to be worded in such a way which allows flexibility for local authorities to respond to local land values and changes in the market. We recognise that caution is needed but disagree that it means protections for affordable housing cannot form part of the Bill. These protections would give value to the government's stated position that they want the Infrastructure Levy to deliver "at least as much" affordable housing as under the current system, rather than leaving local planning authorities with the option to prioritise many infrastructure needs other than affordable housing because of local and political pressure. Affordable housing is infrastructure and should be recognised as such.

As a sector, housing associations are concerned at what "at least as much" will mean in practice. Recent [research from the University of Liverpool commissioned by Homes for the North](#) shows that over the past five years, affordable housing delivered via developer contributions has declined by a quarter, particularly affecting areas most in need of "levelling up". This decline comes at a time when [NHF research demonstrates just how desperate the need for affordable housing is](#), with 8.5 million people having some form of unmet housing need. For 4.2 million of these people social rented housing would be the most appropriate tenure.

In the many local planning authorities where the provision of affordable housing is far lower than is needed, there is a huge risk that the Levy "bakes in" existing levels of under delivery. By setting a baseline of "at least as much" as currently, rather than one based on objective housing need in a local authority area, the lack of affordable housing will continue to be a problem.

The NHF recommends that the government strengthens requirements in the IDS to ensure that local authorities set out their housing need and how they will prioritise it in the spending plan.

We tend to agree that the Right to Require could reduce the risk of affordable housing being negotiated down on viability grounds but have real concerns about the lack of direction given to local authorities to use it. We do not support the government introducing an upper limit on where the right to require is set and would advocate for the opposite whereby a minimum level of right to require is introduced for local authorities. This minimum level would help guarantee the continued delivery of mixed and balanced communities and prevent developer contributions from being used for purposes other than affordable housing where there is a real need. Given the significant risk to the future of mixed communities, it is preferable that any mechanism for the delivery of on-site affordable housing is designed as a mandatory “requirement”, not a discretionary “right”. The NHF propose that the government use its welcome “test and learn” approach to pilot such a mechanism.

The NHF welcomes the approach set out in the consultation in relation to the treatment of 100% or high-proportion affordable housing developments being exempt from paying the Levy. We would like to have the opportunity to work with the department as this policy is further developed to explore integral infrastructure and how exemptions are ensured after they are set out in regulations. The NHF is also happy to convene a group of our members to explore market values and existing use values (EUV-SH) for the purposes of exemptions.

Other areas

The NHF supports the retention of the neighbourhood share under the Infrastructure Levy in cases where an approved Neighbourhood Plan is in place. This would ensure the share is spent according to local priorities. In cases where there is unmet affordable housing need, consideration should be given as to whether the neighbourhood share should be limited to investment towards meeting that need. We do not have any suggestions as to what might be appropriate in non-parished areas, but in order for those areas see the benefit of development it will be necessary for a system to be devised.

As set out earlier in this response, the NHF has concerns about the ability of local planning authorities to manage all the requirements of the proposed Infrastructure Levy regime. We therefore support there being flexibility in the amount of levy

proceeds which can be spent on meeting administration costs during the initial introductory phase up to a maximum of 10%. In the longer term, we think the 5% cap as per CIL regulations would be appropriate, but this should form part of the test and learn phase. It is important that any monies allocated to the costs of administering the Levy are ring-fenced as such within local authority budgets.

The NHF only partly supports the proposals for smaller sites. The principle is a good one, however the consequences for affordable housing delivery in rural areas could be stark. Allowing local authorities to set thresholds lower than 10 units, but only in designated rural areas (DRAs), will fail to capture many communities where affordable housing is desperately needed. The sector has long argued that DRAs are not an appropriate measure given that around 70% of rural areas with fewer than 3,000 residents in the country are not included. We would encourage the government to take this opportunity to look more widely at what is defined as rural before proceeding with the proposed approach to small sites and would propose changing the definition of designated rural areas to all parishes of 3,000 population or fewer as well as all parishes in National Parks and Areas of Outstanding Beauty.

Introducing the Levy

The NHF remains unconvinced that the new regime will be easier to administer than current developer contributions and feel that negotiation is not being removed from the process, merely moved to a different point in the local plan cycle. There is a lack of supporting evidence behind the claim that more value will be extracted for communities under the new system, particularly in areas of low land value and on brownfield land which is prioritised for development under government policies set down elsewhere.

Given all the uncertainty with the new system we are strong supporters of the test and learn approach proposed for dealing with the introduction of the Infrastructure Levy. We do not support local authorities being able to voluntarily roll out the Levy before it becomes mandatory and believe allowing it will undermine the government's commitment to monitor, evaluate and improve the operation of the Levy to allow them to do so. The administrative cost, complexity and uncertainty associated with operating two systems concurrently means that roll out should be managed carefully and in a targeted way.