

Dear Sir/Madam

Thank you for giving the Society of Local Council Clerks the opportunity to comment on this important consultation document.

The Society of Local Council Clerks is the professional body representing clerks to more than 5,000 town, parish and community councils in England and Wales. Influencing, shaping and guiding the planning system is a high priority for many of our members. This issue is, therefore, of special significance and importance to the Society and its members.

In formulating this response, we have consulted widely with our members. We have also urged them to respond individually to it.

We have concentrated on those questions that are of the greatest relevance and significance to the sector. Taking each question in turn.

**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 people 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**

**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.**

While we have no strong views on this question, we would urge, however, that the terms 'integral' and 'Levy-funded' infrastructure should be clearly defined to provide clarity and avoid any confusion and tensions.

**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.**

We have no strong views on this question though would urge that any approach is clear and transparent.

**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.**

We have mixed views on this. While we have some sympathy in giving local authorities a small amount flexibility. A good example might be where it relates to the long-term management and maintenance of infrastructure such as green spaces delivered as part of a planning obligation, especially as this is an issue for many areas – parished and unparished. It is our experience that financial and other arrangements for their long-term management/care of certain types of services such as roads, play areas and habitats provided as part of a development, particularly housing, are not fully considered or addressed as part planning approval/obligation process resulting in problems and tensions downstream including so called ‘fleece holding’.

However, this flexibility should only be permitted in clear and special circumstances, local authorities should be expected overwhelmingly to prioritise infrastructure and affordable housing.

**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.**

We have no strong views on whether these expectations should be through regulation or policy.

**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.**

We have no strong views on this question.

**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.**

No specific approach is preferred, but a clear, transparent standard approach across the whole country would be helpful.

**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.**

We have no strong views on this question.

**Question 9: Do you agree that the Levy should capture value uplift associated with permitted development rights that create new dwellings? [Yes/No/Unsure].**

It is not fair nor proper that new dwellings and some other forms of development brought forward through permitted development can be exempt from developer contributions aimed at mitigating the impact of development on the local community and infrastructure under the current planning rules. This change is welcome and long overdue.

**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.**

With regard to whether there are some types of permitted development where no Levy should be charged, we do not have strong views on this but generally consider that this should be by exception. Also, that if considered desirable that there should be some local flexibility to determine the types of development that should be exempt based on local needs and circumstances.

**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?**

We have no strong views on this question.

**If permitted development brings forward schemes that create a commercial benefit, they should be charged the same s106/CIL rates as properties that have had to go forward through the planning system.**

We have no strong views on this question.

**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.**

We have no strong views on this question.

**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]
- **The use of different Levy rates and minimum thresholds on different development uses and typologies** [Strongly Agree/Agree/Neutral/Disagree/Strongly Disagree/Unsure]

- Ability for local authorities to set 'stepped' Levy rates [Strongly Agree/Agree/Neutral/Disagree/Strongly Disagree/**Unsure**]

We have no strong views on this question.

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

Not applicable.

**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.**

We have serious concerns about the proposal to enable local authorities to borrow against Levy proceeds to allow for the future funding of infrastructure. We are especially concerned what would happen in these circumstances should a local authority determine not to borrow the money, or the developer be unable to pay the proceeds downstream. It may also act as an incentive for developers to build-out less quickly to delay or avoid making any payments.

Many communities already experience problems when infrastructure such as schools, health facilities and roads planned required as part of a development do not come about until many years after the development commenced and, in some instances, when completed.

We would like to see Levy payments continue to be paid at the granting of planning approval stage.

**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.**

We have no strong views on this question.

**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?**

We have no strong views on this question.

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

We have no strong views on this question.

**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.**

As in our response to question 14, we highlighted that there are often problems for the occupiers of a development and the wider community when infrastructure such as schools, health facilities and roads planned required as part of a development do not come about until many years after the development commenced and, in some instances, when completed.

**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 answer where necessary.**

As set out in our response to Q,14 we do not approach the Government's proposal in this respect, however, if it is determined that the focus should be on payment on completion we would urge that local authorities should be able to require early payment of the Levy or a proportion of it for essential infrastructure such as roads, schools, health and other communities etc. and that the neighbourhood share (see q.34) should form part of any early payment.

**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.**

Disagree – for the reasons set out in our response q.14.

**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.**

For reasons stated previously, this is important for the timely delivery and implementation of the essential infrastructure required to deliver the developments and mitigate any adverse impacts.

**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.**

We have no strong views on this question.

**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 principle is supported as it should provide transparency and certainty. Our experience of such documents is that they can be often too general and vague to be meaningful, which should be avoided.

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

While we do not have strong views on the specific information that is required but is imperative that they are supported by robust evidence and information.

**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 – certainly. It is critical that the local community have a meaningful say on what type of infrastructure is required and where, to meet local needs and priorities. This is critical to the success and longevity of the Strategy and overall Infrastructure Levy.

The views of local councils are critical here. They are the first tier of local government. Owing to their unique place embedded within local communities they are well-placed to identify and bring forward local needs and priorities. We would like to see specific reference in the guidance to the need to meaningfully engage with local councils in parished areas in the guidance.

**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

**Identification of whether the area needs leasehold or shared ownership options within the development, as well as self-build services plots.**

Yes.

**Question 28: How can we make sure that infrastructure providers such as county councils can effectively influence the identification of Levy priorities?**

It is vital that there is dialogue between all levels of local authority and that town and parish councils are part of this process.

**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.**

For larger requirements (roads, schools, medical facilities), this is possible. But it is more difficult to identify and forecast changing hyper local level and community needs for the longer term.

**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.**

We have no strong views on this question.

**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.**

Where affordable housing is developed by town and parish councils then there should be a zero-rated Infrastructure Levy rate

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

We have no strong views on this question.

**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.**

We have no strong views on this question.

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

Yes. We strongly support this. As the consultation document quite rightly states “Retaining the Neighbourhood Share will enable local communities to receive a portion of Levy proceeds to spend as they deem appropriate, in a hyper-localised manner, in order to support the needs of the community”.

It is the experience of our members and many others that the neighbourhood share of CIL is working well not only for communities but also developers and local authorities.

The Neighbourhood share ensures that communities receive a fair contribution of a planning obligation to mitigate at a very local level the impacts of new development and in a manner that provides for a high degree of certainty, responsiveness, accountability, transparency and local control. It acts as a powerful incentive for communities to support and shape the development and growth of the area. It helps demonstrate that there are benefits and positives with development and have their say and choose how development contributions are spent to meet the needs and priorities of the community.

Its loss would be a series retrograde step.

We would also propose a change to the regulations on the spending of the neighbourhood share to allow a parish council to retain the neighbourhood share for longer than 5 years where the parish council has clearly defined spending plans for a specific projects that is unable to be completed by the funds generated over a five-year period.

**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.**

We consider that it should be b. We very much welcome and endorse the Government's aspiration that it should go further by exceeding the level of quantum currently secured by the Neighbourhood Share in CIL charging authorities and equivalent amounts in non-CIL charging authorities.

As we stated in our response to question 34, the Neighbourhood share ensures that communities receive a fair contribution of a planning obligation to mitigate at a very local level the impacts of new development and in a manner that provides for a high degree of certainty, responsiveness, accountability, transparency and local control. It helps demonstrate that there may be some benefits and positives with development and acts as incentive for it to happen.

**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?**

The Levelling Up White Paper (February 2022) sets out its plans for a neighbourhood governance review where it will be made easier to set up parish councils. This will be key to the future successful administration of the neighbourhood share. Parish councils, the tier of local authority closest to the people they serve, operate with elected local leaders, democratic processes and are statutorily accountable and transparent.

It is difficult to see how other bodies without the same legislative frameworks can administer the neighbourhood share.



**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.**

We consider that it should be c). We consider that this amount should be more than sufficient to enable a local authority to recover the full costs they incur in operating the Levy.

**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 countrywide exemptions. How strongly do you agree the following should be retained:**

**- residential annexes and extensions; [Strongly Agree/Agree/Disagree/Strongly Disagree]**

While have no strong views on this question, if the Government is minded to introduce this, we consider that this is best determined at the local level having regard to local needs and circumstances.

**- self-build housing; [Strongly Agree/Agree/Disagree/Strongly Disagree] Retain as exempt as long as this is limited to one property.**

See above.

**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? As above, on brown-field sites where development would significantly enhance an area.**

Not applicable.

**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.**

Again, while have no strong views on this question, if the Government is minded to introduce this, we consider that this should be best determined at the local level having regard to local needs and circumstances.

**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.**

Again, while have no strong views on this question, if the Government is minded to introduce this, we consider that this should be best determined at the local level having regard to local needs and circumstances.

**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.**

We have no strong views on this question.

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

Again, while have no strong views on this question, if the Government is minded to introduce this, we consider that this should be best determined at the local level having regard to local needs and circumstances.

**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.**

We have no strong views on this question.

**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.**

We do not consider that the principle of a proposed 'test and learn' approach to the transition to the new Levy is helpful nor desirable. We would strongly urge that its introduction should not be phased and there should be single date for its introduction to avoid cause confusion, provide certainty and maximise its impact.

If the Government is minded to introduce a test and learn approach, we urge that it be started and the final scheme rolled out as soon as possible.

**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?**

We have no strong views on this question.

Thank you again for the opportunity to comment upon this important consultation. If it would be helpful, the Society will be pleased to meet with or speak to officials to explain in more detail its points and observations over this issue.

Yours sincerely,

Rob Smith

Chief Executive, Society of Local Council Clerks