



WOKINGHAM BOROUGH COUNCIL

A Meeting of an **INDIVIDUAL EXECUTIVE MEMBER DECISION** will be held in FF8 - Civic Offices, Shute End, Wokingham RG40 1BN on **WEDNESDAY 31 MAY 2023 AT 2.00 PM**

Susan Parsonage
Chief Executive
Published on 22 May 2023

Note: Non-Committee Members and members of the public are welcome to attend the meeting or participate in the meeting virtually, in line with the Council's Constitution. If you wish to participate either in person or virtually via Microsoft Teams please contact Democratic Services. The meeting can also be watched live using the following link:
<https://youtube.com/live/9rWIWxSE5d4?feature=share>

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WOKINGHAM BOROUGH COUNCIL

Our Vision

A great place to live, learn, work and grow and a great place to do business

Enriching Lives

- Champion outstanding education and enable our children and young people to achieve their full potential, regardless of their background.
- Support our residents to lead happy, healthy lives and provide access to good leisure facilities to complement an active lifestyle.
- Engage and involve our communities through arts and culture and create a sense of identity which people feel part of.
- Support growth in our local economy and help to build business.

Safe, Strong, Communities

- Protect and safeguard our children, young and vulnerable people.
- Offer quality care and support, at the right time, to prevent the need for long term care.
- Nurture communities and help them to thrive.
- Ensure our borough and communities remain safe for all.

A Clean and Green Borough

- Do all we can to become carbon neutral and sustainable for the future.
- Protect our borough, keep it clean and enhance our green areas.
- Reduce our waste, improve biodiversity and increase recycling.
- Connect our parks and open spaces with green cycleways.

Right Homes, Right Places

- Offer quality, affordable, sustainable homes fit for the future.
- Build our fair share of housing with the right infrastructure to support and enable our borough to grow.
- Protect our unique places and preserve our natural environment.
- Help with your housing needs and support people to live independently in their own homes.

Keeping the Borough Moving

- Maintain and improve our roads, footpaths and cycleways.
- Tackle traffic congestion, minimise delays and disruptions.
- Enable safe and sustainable travel around the borough with good transport infrastructure.
- Promote healthy alternative travel options and support our partners to offer affordable, accessible public transport with good network links.

Changing the Way We Work for You

- Be relentlessly customer focussed.
- Work with our partners to provide efficient, effective, joined up services which are focussed around you.
- Communicate better with you, owning issues, updating on progress and responding appropriately as well as promoting what is happening in our Borough.
- Drive innovative digital ways of working that will connect our communities, businesses and customers to our services in a way that suits their needs.

For consideration by

Lindsay Ferris, Executive Member for Planning and Local Plan

Officers Present

Judy Kelly, Head of Infrastructure Delivery and Projects

Callum Wernham, Democratic & Electoral Services Specialist

IMD NO.	WARD	SUBJECT	
IMD 2023/11	None Specific	TECHNICAL CONSULTATION ON THE INFRASTRUCTURE LEVY: CONSULTATION PROPOSALS	5 - 34

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Agenda Item IMD11

INDIVIDUAL EXECUTIVE MEMBER DECISION

REFERENCE IMD: IMD 2023/11

TITLE	Technical Consultation on the Infrastructure Levy: Consultation Proposals
DECISION TO BE MADE BY	Executive Member for Planning and Local Plan - Lindsay Ferris
DATE, MEETING ROOM and TIME	31 May 2023 FF8 at 2pm
WARD	None Specific;
DIRECTOR / KEY OFFICER	Director, Place and Growth - Giorgio Framaliccio

PURPOSE OF REPORT (Inc Strategic Outcomes)

To consider the council's response to the government consultation: Technical consultation on the Infrastructure Levy (March 2023)

RECOMMENDATION

That the Executive Member for Planning and Local Plans agrees that Wokingham Borough Council submit the comments contained in Enclosure 1 as this Council's response to the government consultation 'Technical consultation on the Infrastructure Levy' (March 2023).

SUMMARY OF REPORT

The Levelling Up and Regeneration Bill ('the Bill') seeks to replace the current system of developer contributions with a mandatory, locally determined Infrastructure Levy. The Bill provides the framework for the new Infrastructure Levy, with the detailed design to be delivered through regulations. The government has published the 'Technical consultation on the Infrastructure Levy' (DLUHC, March 2023).

The consultation seeks views on seven principal areas:

1. Fundamental design choices: proposals
2. Levy rates and minimum thresholds
3. Charging and paying the Levy
4. Delivering Infrastructure
5. Affordable housing
6. Other areas
7. Introducing the Levy

The consultation runs to 9 June 2023. The consultation documents are available to download from the [GOV.UK website](#).

The consultation invites comments on 45 specific questions. Recommended responses are provided in Enclosure 1 to this report.

The consultation proposes that the Levy will be a mandatory charge calculated on the value of the property at completion per square metre and applied above a minimum threshold. It is intended to enable local authorities to capture a higher proportion of the gross development value (GDV) of developments and reduce uncertainty relating to S106 planning negotiations with developers.

Levy rates and minimum thresholds will be set and collected locally, and local authorities will be able to set different rates within their area. There is a process of examination in public of Infrastructure Levy charging schedules, in order for rates to be adopted.

Local authorities will be required to prepare Infrastructure Delivery Strategies. These will set out a strategy for delivering local infrastructure and spending Levy proceeds. Unlike the current community infrastructure levy (CIL) system, it is intended that the Infrastructure Levy will enable local authorities to borrow against future Levy receipts.

A new 'right to require' will enable local authorities to set out the proportion of the Levy they want delivered as affordable homes and the proportion they want delivered as cash.

Background

The government has published the 'Technical consultation on the Infrastructure Levy' (DLUHC, March 2023).

The consultation seeks views on seven principal areas:

1. Fundamental design choices: proposals
2. Levy rates and minimum thresholds
3. Charging and paying the Levy
4. Delivering Infrastructure
5. Affordable housing
6. Other areas
7. Introducing the Levy

The consultation runs to 9 June 2023. The consultation documents are available to download from the [GOV.UK website](https://www.gov.uk).

Business Case (including Analysis of Issues)

As set out above, the consultation invites views on a number of technical aspects of the proposed Infrastructure Levy. The proposals are technically complex and in many places lack detail to understand the government's intentions in full and from which to consider local implications. The government is inviting 'test and learn' local authorities to trial the new Infrastructure Levy ahead of its roll-out nationally over a 10-year period.

Recommended responses to the 45 specific questions set out in the consultation document are provided in Enclosure 1 to this report. An overview of the more significant proposed changes is set out below.

Fundamental design choices: proposals

The consultation documents propose setting a distinction between 'integral' infrastructure required for the successful functioning of a site and 'levy' infrastructure to be paid for through levy revenues. It is intended that developers would deliver integral infrastructure through planning conditions or, where this is not possible, through targeted planning obligations known as 'Delivery Agreements'. It is recommended that the council highlight concerns with an overly rigid classification of integral and levy infrastructure, given that each planning application has unique impacts and infrastructure requirements. Currently, planning conditions are not considered as robust a method of securing obligations from developers as S106 agreements and it is unclear from the consultation whether the new 'Delivery Agreements' are identical to S106.

S106 will be retained in the new system but for restricted purposes. Sites will come forward through three different 'routeways' depending on their character:

- The core routeway. The majority of schemes will be subject to this routeway. The Levy will function as a cash-based system where rates and thresholds apply. S106 agreements will retain a restricted function, limited to securing matters that cannot be conditioned for.
- The infrastructure in-kind routeway. On the largest and most complex sites, often with unique infrastructure requirements, s106 agreements can be used to deliver infrastructure as an in-kind payment of the Levy. The value of this

agreement must equal or exceed what would have been secured in cash through a calculation of Levy liabilities.

- The s106-only routeway. Sites where Gross Development Value (GDV) per m² cannot be calculated, or where buildings are not the main focus of development, such as minerals or waste sites, will not be subject to the Levy. Planning obligations will apply as now.

Views are sought on potential thresholds for the 'infrastructure in kind' routeway, from high (e.g. 10,000 homes), medium (2,000-4,000 homes) to low (500 homes). It is the council's recommendation that the ability for developers to deliver infrastructure in addition to levy payments is welcomed. However, there would need to be robust mechanisms to ensure clarity between integral and levy infrastructure in such cases, and transparency of developers' incurred costs to enable the intention of securing higher Levy sums than at present to be realized.

Levy rates and minimum thresholds

It is recommended that the council supports the intention for levy rates, minimum threshold and charging zones to be set locally by a local authority. It is not recommended that the council supports the intention for lower levy rates (or higher minimum thresholds) for brownfield development or developments of fewer than 10 units, as these have been demonstrated to be viable within the Wokingham area.

Charging and paying the Levy

The consultation proposes a number of stages of valuation of development and calculation of charges as follows:

- *Planning stage*: Indicative liability calculation based on assumed GDV
- *Post-planning decision and prior to development occupation*: Provisional levy payment can be initiated by developer. An independent valuation of the anticipated GDV may be required
- *Post-completion or once development is sold*: Either developer or local authority can require a final adjustment figure to the provisional levy payment already made. It is noted that this may require the developer to pay further monies to the council, or the local authority returning an overpayment to the developer.
- Should there be any appeal regarding the calculation of the levy liability, a further valuation of the GDV may be required.

It is recommended that the council raise concerns with this overly complex process, which has multiple opportunities for dispute and a high administrative burden. In contrast to the above proposals, the existing CIL system requires developers to pay CIL levies prior to *commencing* building their development, so monies are received early and infrastructure can be funded early. It is not clear from the consultation proposals whether developers will be *required* to make the provisional payment in step 2 above, how phased occupations across larger sites will be treated and risks around a developer choosing not to fully complete their development. It is of concern that councils may need to return funds to developers if GDV of the site has decreased. It is recommended that the CIL system is largely retained, but amended to allow an element of uplift in payment to councils at the end of the process relating to GDV.

Delivering Infrastructure

The proposed ability to borrow against Levy receipts is welcomed, however this will put significant risk on the local authority receiving Levy receipts at a later date. In addition, there will be greater pressure/risk on local authorities to have perfect cashflow management to avoid borrowing longer than needed and thus creating unnecessary interest costs. In addition, if no exemptions (i.e. MRP holidays) are made in relation to the requirement to provide MRP for Levy forward funded debt, this will create additional revenue costs through minimum revenue provision which will affect the revenue funding for statutory services such as adults and children's social care. This will have a significant impact on the affordability of council's revenue budgets and likely to delay infrastructure rather than accelerate it.

Affordable housing

The Infrastructure Levy is intended to at least as much (if not more) on-site affordable housing as developer contributions do now. On-site affordable housing can be delivered as an in-kind payment of the Levy through a new 'right to require'. This will see a percentage of the overall Levy value delivered in-kind by developers as on-site affordable housing, protecting it from the pressure of other spending priorities. It is recommended that the council welcome the intention to maintain or increase levels of affordable housing and allow local authorities to specify the tenure (social rent, first homes, shared ownership) of affordable housing. However, concerns are raised on the complexity of how the number of affordable housing units will be calculated, as well as the level of risk of other infrastructure (GP, school, highways etc) not coming forward or being affordable as a consequence.

Other areas

Imitating provisions under the existing CIL legislation, both a neighbourhood (parish) share, and administrative share of the new Levy will be able to be retained to support funding of local community priorities and Levy administration respectively. It is recommended that the council supports an uncapped level of administrative proportion in the early stages of implementing any new Levy due to the additional complexity. It is recommended that the council supports a lower proportion of neighbourhood/parish than the current 15-25% currently allowed through CIL, or a mechanism that will require more collaboration between local authority and parish councils to maximize the best overall use of Levy receipts for the area.

Introducing the Levy

It is recommended that the council does not volunteer to be a 'test and learn' authority to implement the new Infrastructure Levy, ahead of mandatory roll-out in 10 years' time. The system appears overly complex and financial risks have been clearly identified. CIL is operating well in the council alongside S106 obligations; over the last five years alone, the council has spent c£170m in S106 and CIL contributions supporting strategic infrastructure.

FINANCIAL IMPLICATIONS OF THE RECOMMENDATION

The Council faces unprecedented financial pressures as a result of; the longer term impact of the COVID-19 crisis, Brexit, the war in Ukraine and the general economic climate of rising prices and the increasing cost of debt. It is therefore imperative that Council resources are optimised and are focused on the vulnerable and on its highest priorities.

	How much will it Cost/ (Save)	Is there sufficient funding – if not quantify the Shortfall	Revenue or Capital?
Current Financial Year (Year 1)	Nil.	Not relevant.	Not relevant.
Next Financial Year (Year 2)	Nil.	Not relevant.	Not relevant.
Following Financial Year (Year 3)	Nil.	Not relevant.	Not relevant.

Other financial information relevant to the Recommendation/Decision

Should the government's Infrastructure Levy proposals proceed, the ability to borrow against CIL receipts is welcomed, however this will put significant risk on the local authority receiving Levy receipts at a later date. In addition, there will be greater pressure/risk on local authorities to have perfect cashflow management to avoid borrowing longer than needed and thus creating unnecessary interest costs. In addition, if no exemptions (i.e. MRP holidays) are made in relation to the requirement to provide MRP for Levy forward funded debt, this will create additional revenue costs through minimum revenue provision which will affect the revenue funding for statutory services such as adults and children's social care. This will have a significant impact on the affordability of council's revenue budgets and likely to delay infrastructure rather than accelerate it.

Cross-Council Implications

The consultation has the potential to increase levels of affordable housing, and allow the council to specify specific type of affordable housing to be delivered by developers (e.g. social rent). However, it is not clear how this may negatively impact the availability of Levy funds in future for other types of infrastructure (GPs, schools, highways and travel etc).

Public Sector Equality Duty

This report relates to proposed changes to the infrastructure levy system promoted and consulted on by government, and does not directly relate to actions of the council. As such an equality assessment has not been undertaken.

An equality assessment will be undertaken by government and views have been specifically invited as part of the consultation process on potential impacts of the proposals in this regard.

SUMMARY OF CONSULTATION RESPONSES	
Director – Resources and Assets	No comment
Monitoring Officer	No comment
Leader of the Council	No comment

Reasons for considering the report in Part 2
N/A

List of Background Papers
Enclosure 1 – Proposed responses to consultation questions

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Recommended Representation

Chapter 1 – Fundamental design choices

Question 1: Do you agree that the existing CIL definition of ‘development’ should be maintained under the Infrastructure Levy, with the following excluded from the definition:

- developments of less than 100 square metres (unless this consists of one or more dwellings and does not meet the self-build criteria) – Yes/No/Unsure
- Buildings which people do not normally go into - Yes/No/Unsure
- Buildings into which peoples go only intermittently for the purpose of inspecting or maintaining fixed plant or machinery - Yes/No/Unsure
- Structures which are not buildings, such as pylons and wind turbines. Yes/No/Unsure

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

Yes, Wokingham Borough Council agrees with the proposal to maintain the definition of development and the stated exceptions. The council supports retaining the 100 square metre threshold, unless consisting of one or more dwellings.

Whilst supportive, appeal decisions show that greater clarity is required to specify whether certain types of built form constitute CIL liable developments for example carports and lean to extensions both to domestic and commercial buildings.

Other responses regarding exemptions are addressed in later questions.

Question 2: Do you agree that developers should continue to provide certain kinds of infrastructure, including infrastructure that is incorporated into the design of the site, outside of the Infrastructure Levy? [Yes/No/Unsure]. Please provide a free text response to explain your answer where necessary.

Yes, Wokingham Borough Council agrees that developers should continue to provide certain kinds of infrastructure as part of development proposals, but do not support a new system that seeks to define ‘Integral Infrastructure’ from ‘Levy Funded Infrastructure.’

Paragraph 1.14 of the consultation documents states that the proposed approach ‘does not constitute a significant departure from what happens in the current planning system.’ It is therefore not clear why this further complication is needed.

In the experience of the council there are very few issues where the examples of 'Integral Infrastructure' are delivered by wider infrastructure funding.

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.

If the government are minded to introduce the two types of infrastructure proposed there will need to be a very clear distinction and detailed guidance between what constitutes Integral and Levy-Funded infrastructure.

Wokingham Borough's preference would be for 'integral' infrastructure to be set out in regulations or policy (option b). This would reduce the likelihood of negotiations about what is or is not included. This approach could be used in conjunction with option c) to recognise that a list of typologies cannot be exhaustive and allow authorities with the flexibility to clearly set out any additional items which will be sought as integral contributions.

The council is concerned by the reference in paragraph 1.23 that Levy Funded infrastructure might include water and sewerage infrastructure and by inference other utilities. The council does not consider this to be appropriate and suggests that this should remain separate from any levy system.

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.

Yes.

Wokingham Borough Council agrees with the principle of this additional flexibility, as local authorities are best placed to determine where Levy funds should be allocated to provide and maintain infrastructure.

Whilst supporting that the Levy might appropriately be used to build and social infrastructure and potentially assist with initial start-up costs, the council does not support the Levy being used to support ongoing funding of services such as social care and free childcare schemes. To accept such a position could have consequences of infrastructure funds being used to cross-subsidise other service areas. Over a long period this could serve to undermine the delivery of infrastructure rich, sustainable place making, and similarly undermine public confidence in the ability of the planning system to deliver the development strategies set out in local plans.

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.

Yes, Wokingham Borough Council agrees that infrastructure and affordable housing demands should be prioritised. This should be set out through regulations to provide a robust approach.

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.

Yes.

Other areas where Levy funds could be spent include Strategic Access Management and Monitoring (SAMM) payments, required as part of mitigating any adverse impacts on the Thames Basin Heaths Special Protection Area, which were often not considered 'infrastructure' when CIL was first established. Similarly, longer term management and maintenance of open space, highways and other facilities could be incorporated.

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.

Yes. Wokingham Borough Council's preferred threshold would be option d) local authority discretion. This would allow sufficient flexibility for local authorities to determine how and when infrastructure should be delivered in kind. This would also recognise that there is no one size fits all approach, with parameters clearly depending on the specifics of both the scale of the development proposed, and the local authority's preferred approach.

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.

Based on the information available Delivery Agreements appear to act in a very similar way to the existing S106 planning obligations system. Further information will need to be provided to set out how Delivery Agreements will work in practice, and whether obligations within Delivery Agreements will be placed on land charges register.

Chapter 2: Levy rates and minimum thresholds

Question 9: Do you agree that the Levy should capture value uplift associated with permitted development rights that create new dwellings? [Yes/No/Unsure]. Are there some types of permitted development where no Levy should be charged? [Yes/No/Unsure]. Please provide a free text response to explain your answer where necessary.

Yes.

Wokingham Borough Council strongly agrees that the levy should capture value uplift associated with all developments that create a new dwelling including those enabled through permitted development rights. The creation of all new dwellings has an impact on local services and facilities which have to be funded. This impact does not reduce if enabled by permitted development rights. If the levy did not seek to capture the value uplift, the local taxpayer would be effectively subsidising the developers through the local authority investing in new or enhanced infrastructure.

Permitted development for residential extensions and other minor development that do not create a new dwelling should continue to be exempt.

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?

The value uplift from permitted development can be significant, especially where new dwellings are created. Any value threshold should therefore be set locally to take into account local land and sales values, which would ensure development helps to support local infrastructure, whilst still being viable.

Wokingham Borough Council objects to the suggestion that development proposal enabled by permitted development being considered differently to other forms of development. Under the levy, if the value uplift from development enabled by permitted development rights is comparatively lower than other types of development, then the levy liability will also be lower. The council is not aware of any evidence showing that the application of the levy would make development enabled by permitted development rights unviable.

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.

No.

In the experience of Wokingham Borough Council, development is generally viable, including development of brownfield land. Based on our experience there is no justification to consider additional offsets.

It is recognised that lower sales values and higher abnormal costs may make development more marginal on some brownfield land. Whilst this may be seen as an argument for additional offsets there remain various other routes to support the viability of brownfield land outside the Levy, for example Homes England funding. The council would urge the government to scope in the levy for all brownfield land, with support provided to marginal developments on an evidenced basis.

Additionally, should the levy propose any additional offset for brownfield development, there would need to be a clear definition of 'brownfield', to ensure that the offset applied to substantially developed land, and not largely undeveloped land with a small element of existing use within the curtilage.

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]
- Separate Levy rates for thresholds for existing floorspace that is subject to change of use, and floorspace that is demolished and replaced [Strongly Agree/Agree/Neutral/Disagree/Strongly Disagree/Unsure]

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

Wokingham Borough Council's response is outlined below:

- Charging the levy on final sale GDV of a scheme: Agree

The principle of charging the Levy on the final sale value is welcomed. However, there are concerns about how this will be implemented practically, including the administrative burden. Consideration should be given to amending the existing CIL regulations to enable an additional levy calculation at the end of the process, based on final sale GDV. See response to question 15.

- The use of different levy rates and minimum thresholds on different development uses and typologies: Agree

In a similar way to CIL the council agrees with the proposals to allow different Levy rates on different types and locations of development. As highlighted in other responses, the use of thresholds in some circumstances will be more challenging, as all new development, particularly new dwellings, will have an impact on local infrastructure. In some cases this may mean that a developer who has simply overpaid for a site incurs a reduced Levy liability. In this scenario the landowner is the main beneficiary, to the detriment of the local authority who miss out on the expected funds.

- Ability for local authorities to set 'stepped' Levy rates: Neutral

The ability to set 'stepped' rates could provide flexibility, but this could also give rise to additional complexity for developers and local authorities.

If the Levy examination process is robust then there should be a very low risk of the 'overly ambitious rate setting' described by paragraph 2.11.

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

Development proposing the change of use can be more difficult to deliver, but as noted in question 11, development in Wokingham Borough is generally viable. In this context, it is unclear why for existing floorspace both the threshold and the rate should be changed in a way which gives rise to additional complexity. The rate could be the same as for sites with no existing floorspace, with the key difference being the threshold the rate applies. This could be tested as part of the preparation and examination of the charging schedule.

Chapter 3 – Charging and paying the Levy

Question 14: Do you agree that the process outlined in Table 3 is an effective way of calculating and paying the Levy? [Yes/No/Unsure] Please provide a free text response to explain your answer where necessary.

No.

Wokingham Borough Council's opinion is that the proposed process is overly long, complex and resource intensive.

It is unclear whether the new system can be effectively applied to Outline planning applications, where floorspace will not be known until the Reserved matters application stage. Uncertainty about the indicative value of the Infrastructure Levy at the Outline stage may impact S106 negotiations which are concluded at this stage.

Post-planning stage it is not clear whether the provisional Levy payment is at the developer's discretion or that of the local planning authority.

Multiple phases of small developments within a larger site should be discouraged to reduce unnecessary administrative complexity and resource.

There is risk involved in removing the land charges notice upon the developer providing the provisional levy payment. The notice should stay in place until the final Levy is paid.

The final stage is reliant on the sales price. There is a risk that some developers will simply sell a site onto a separate holding company for an arbitrarily reduced value, in

order to reduce the final Levy liability. The ability to 'game' the system must be robustly guarded against.

The ability of local authorities to borrow against future Levy proceeds adds further complexity, as there will be some uncertainty about the final sum received. There is also a loss of funding to support infrastructure with a proportion of the Levy being used to serving the loan and not the provision of infrastructure. The government should recognise the local authority borrowing comes with consequences and that local authorities which are experiencing wider financial pressures may not be able to accommodate the risk of borrowing.

It is increasingly common for developers to sell developments off plan in order to support cash flow. If the sales price is agreed with the new buyer very early in the process, this is likely to be at a reduced value. Market value is likely to have improved by the time of completion. The council requests that the final adjusted payment accounts for this approach, recognising the 'real' value on completion and not that of any early transaction.

It will be important to define the 'point of site completion,' in the guidance/regulations as it is unclear how far this includes matters such as landscaping, lighting etc. This risks considerable disagreement on when a site was completed, and the implications for the final adjusted payment.

Payment of Levy prior to occupation or completion does not permit adequate time for the local authority to plan, design, consult on, tender, commission and construct infrastructure projects to be delivered when they are required.

The situation where Levy sums may need to be returned to a developer where the GDV is less than predicted will cause administrative problems. What happens if the parish share has already been passed to the parish/town council, or if the Levy has been spent on infrastructure?

Given that it can be difficult to get information from developers, the Levy regulations would need to impose a requirement for developers to comply with providing information at all necessary stages, to avoid additional resource pressure on Local Authorities.

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.

Wokingham Borough Council suggests the government consider amending the existing CIL regulations to enable a further payment at the end of the process to capture a proportion of GDV, which is the key driver for this consultation. This would considerably reduce the complexity of the current Levy proposals whilst also achieving the government's ambition of capturing a greater and fair proportion development value to fund infrastructure improvements in a responsive manner.

Question 16: Do you agree with the proposed application of a land charge at commencement of development and removal of a local land charge once the provisional Levy payment is made? [Yes/No/Unsure] Please provide a free text response to explain your answer where necessary

No. Wokingham Borough Council strongly objects to the removal of the local land charge once the provisional levy payment is received. Removing the local land charge would introduce an unacceptable and unnecessary risk of non-payment. The local land charge should remain on the site until the final Levy payment is made.

Question 17: Will removal of the local land charge at the point the provisional Levy liability is paid prevent avoidance of Infrastructure Levy payments? [Strongly Agree/Agree/Neutral/Disagree/ Strongly Disagree/Unsure] Please provide a free text response to explain your answer where necessary.

Strongly Disagree. Wokingham Borough Council strongly disagrees with the suggestion. Removal of the local land charge at the point the provisional Levy liability is paid unacceptably and unnecessarily increases risk of dispute later in the process.

Question 18: To what extent do you agree that a local authority should be able to require that payment of the Levy (or a proportion of the Levy liability) is made prior to site completion? [Strongly Agree/Agree/Neutral/Disagree/Strongly Disagree/Unsure]. Please explain your answer.

Strongly agree. Wokingham Borough Council strongly agrees that a local authority should be able to *require* Levy payments. However, this question seems to contradict Table 3, which refers to developers paying the provisional payment before first site occupation, rather than completion. As mentioned in other question responses, the

current CIL system enables local authorities to receive levy payments prior to commencement of development, thereby allowing the lead in time for the infrastructure to be properly planned and delivered. The proposed new Infrastructure Levy system would be a step backwards in ensuring that infrastructure can be delivered early and when required. Whilst it is accepted that local authorities can borrow money to enable early infrastructure provision, it is not realistic that all local authorities will be able to take opportunity of this due to financial risks. A proportion of the levy is also lost to servicing the borrowing, rather than provision itself.

Question 19: Are there circumstances when a local authority should be able to require an early payment of the Levy or a proportion of the Levy? Please provide a free text response to explain your where necessary.

Yes. Wokingham Borough Council believes early payment is justified when the infrastructure is deemed to be required in a specific timescale. In this circumstance, early payment of the Levy would enable adequate time for the infrastructure to be planned, consulted on, designed, tendered, commissioned and constructed.

Question 20: Do you agree that the proposed role for valuations of GDV is proportionate and necessary in the context of creating a Levy that is responsive to market conditions [Yes/No/Unsure]. Please provide a free text response to explain your answer where necessary.

Yes. Wokingham Borough Council agrees that the proposed role of valuations is proportionate. It is noted however that the process is overly long, complex and resource intensive, and includes the opportunity for appeal to an unspecified arbitrator.

Chapter 4 – Delivering infrastructure

Question 21: To what extent do you agree that the borrowing against Infrastructure Levy proceeds will be sufficient to ensure the timely delivery of infrastructure? [Strongly Agree/Agree/Neutral/ Disagree/Strongly Disagree/Unsure]. Please provide a free text response to explain your answer where necessary.

Disagree. Wokingham Borough Council disagrees that the borrowing against the levy will be sufficient to ensure the timely delivery of infrastructure. The council is concerned as to how affordable the borrowing will be, and the risks involved in borrowing against unknown future financial receipts which may increase or decrease against forecast levels. These risks are acknowledged in the consultation documents. The provision of Levy payments early in the planning delivery process, as with the existing CIL regime, is

preferable and provides a much more realistic opportunity to ensure timely delivery and reduce financial stress on local authorities.

Wokingham Borough Council welcomes the ability to borrow against CIL receipts however this will put significant risk on the local authority receiving CIL receipts at a later date. In addition, there will be greater pressure/risk on local authorities to have perfect cashflow management to avoid borrowing longer than needed and thus creating unnecessary interest costs. In addition, if no exemptions (i.e. MRP holidays) are made in relation to the requirement to provide MRP for CIL forward funded debt, this will create additional revenue costs through minimum revenue provision which will affect the revenue funding for statutory services such as adults and children's social care. This will have a significant impact on the affordability of Council's revenue budgets and likely to delay infrastructure rather than accelerate it.

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/Agro explain your answer where necessary.

Agree. Wokingham Borough Council agrees that the government should go further. As set out in the council's answer to Question 21, the payment of any levy early in the planning delivery process, as with the existing CIL regime, provides a much more realistic opportunity to ensure timely delivery of infrastructure and reduces financial stress on local authorities.

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.

Yes. Wokingham Borough Council supports the delivery of infrastructure by the developer, including off-site infrastructure improvements where necessary.

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.

Agree. Wokingham Borough Council supports the preparation of Infrastructure Delivery Strategies, however CIL already allows for this transparency and certainty through Infrastructure Funding Statements. It is unclear what benefits the consultation proposals will bring over and above the current CIL regime in this regard.

The consultation proposals include the examination of the Infrastructure Delivery Strategy. The council is concerned that the requirement for examination will introduce an additional burden over and above the current CIL regime.

Further, the council is concerned that the requirement will prove to be impractical. Whilst noting reference to updating without an examination, no guidance is provided. In the absence of clear guidance, the council is concerned that the need for examination results in a system which will be slow to respond to changes in the understanding of infrastructure needs. There are also significant concerns that infrastructure providers such as sewerage and power utilities will fail to provide sufficient support and information to support the preparation of Infrastructure Delivery Strategies. In the council's experience, utility companies' focus is on detailed development proposals (planning applications), with far lesser engagement during plan-making.

The council has raised concerns regarding the use of the levy to fund water and sewerage infrastructure improvements in response to Question 3. The council does not consider this to be appropriate and suggests that this should remain separate from any levy system.

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

Local needs assessments (utilities, education, community facilities, healthcare, specialist housing, skills and training needs, transport, open space, playing pitches, air quality improvements, noise improvements, drainage and flood mitigation, biodiversity, Habitat Reg mitigations (SANG, SAMM), based on strategic assessments and forecasting.

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. Wokingham Borough Council believes that there is a role for the local community to be engaged in the production of an Infrastructure Delivery Strategy, however any role must reflect that knowledge will be imperfect and that expectations may be unrealistic. Service providers are best placed to advise on need from an evidenced position and help identify realistic and delivery improvements. Community engagement is likely to be most effective in terms of prioritising defined needs.

Question 27: Do you agree that a spending plan in the Infrastructure Delivery Strategy should include:

- Identification of general 'integral' infrastructure requirements
- Identification of infrastructure/types of infrastructure that are to be funded by the Levy
- Prioritisation of infrastructure and how the Levy will be spent
- Approach to affordable housing including right to require proportion and tenure mix
- Approach to any discretionary elements for the neighbourhood share
- Proportion for administration
- The anticipated borrowing that will be required to deliver infrastructure
- Other – please explain your answer
- All of the above

The spending plan should include details of how the proposed Levy will be spent, however in the experience of Wokingham Borough Council there are very few issues where the examples of 'Integral Infrastructure' are delivered by wider infrastructure funding. Further clarity is requested on the process for re-prioritisation of infrastructure priorities and the subsequent update of the infrastructure delivery strategy.

It is noted that some of the infrastructure priorities mentioned in the consultation, such as GP surgeries and healthcare facilities are services that are delivered by third parties rather than local authorities and that delivery models promoted by governing bodies can alter over relatively short periods.

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

- Guidance to local authorities on which infrastructure providers need to be consulted, how to engage and when
- Support to county councils on working collaboratively with the local authority as to what can be funded through the Levy
- Use of other evidence documents when preparing the Infrastructure Delivery Strategy, such as Local Transport Plans and Local Education Strategies
- Guidance to local authorities on prioritisation of funding
- Implementation of statutory timescales for infrastructure providers to respond to local authority requests
- Other – please explain your answer

Wokingham Borough Council is a unitary local authority and not part of a two tier system with district and county councils.

The council's principal engagement will be with external infrastructure providers. Whilst guidance on consulting provides clarity, in the council's experience many infrastructure providers are not resourced to proactively engage with the plan-making process. A clear legal requirement and sufficient funding/resourcing of external agencies is required, especially as multiple local planning authorities will be preparing local plans and Infrastructure Delivery Strategies at a similar time. It is important to consider coordination across wider than local areas.

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.

Agree. Wokingham Borough Council agrees that it is possible to identify infrastructure requirements at the local plan stage, however this is just a fixed point in time and it must be recognised that infrastructure needs will vary over time as a result of changes in use (social change and/or population change), the evolution of planned developments and as a result of windfall developments. Unforeseen pressures can arise through the lifetime of a local plan (e.g. the current requirement for additional school places due to large immigration of Hong Kong and Ukraine citizens, growth in special education needs and changes in the national economy) which will add to local authorities funding pressures.

Chapter 5 – Delivering affordable housing

Question 30: To what extent do you agree that the 'right to require' will reduce the risk that affordable housing contributions are negotiated down on viability grounds? [Strongly Agree/Agree/Neutral/Disagree/Strongly Disagree/Unsure] Please provide a free text response to explain your answer where necessary.

Agree. We agree that the "right to require" gives governing bodies a legal mandate to enforce developers' commitments to build affordable housing, which can be an effective way to lower the risk of affordable housing contributions being negotiated down on viability grounds. However it is unclear whether the proposed approach to affordable housing, suggesting that affordable housing is bought at discount from the market value, means that local authorities will gain or lose out.

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

Agree. Wokingham Borough Council agrees that a discount should apply to high percentage affordable housing proposals however this should only apply where the additional affordable housing units beyond the policy requirements are not exclusively limited to shared ownership or first homes. It would be preferable for local authorities to retain flexibility in determining the appropriate mix/tenure of affordable housing types based on local needs.

However, should high percentage affordable housing schemes be subject to a discounted Levy rate, Wokingham Borough Council would still expect such schemes to mitigate their specific impact in planning terms, through S106 mechanisms or equivalent.

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

This can include: Suitable Alternative Natural Green (SANG) provision and maintenance together with appropriate contributions to Special Protection Area (SPA) access and monitoring, highways, electric vehicle charging, cycle parking, drainage, landscaping, employment skills, biodiversity net gain, public open space.

Question 33: As per paragraph 5.13, do you think that an upper limit of where the 'right to require' could be set should be introduced by the government? [Yes/No/unsure] Alternatively, do you think where the 'right to require' is set should be left to the discretion of the local authority? [Yes/No/unsure]. Please provide a free text response to explain your answer where necessary.

No. Wokingham Borough Council strongly objects to the suggestion that an upper limit of 'right to require' could be introduced. We believe that it is more appropriate for 'right to require' actions to be looked after by local authority. This would make it possible to adapt and customise to adapt to the special requirements and situations of local communities.

Chapter 6 – Other areas

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

Yes, in part.

Wokingham Borough Council supports a proportion of infrastructure funds being used to delivery priority local infrastructure projects, however the council disagrees with the current mechanisms. In the council's experience of CIL, there remains a significant funding gap between CIL receipts and the costs of new infrastructure. Whilst the council strongly supports the principle of ensuring a proportion of infrastructure funds are used to delivery local projects identified by the parish/town council, it is recommended that the balance and mechanism to achieve this is altered to prioritise strategic infrastructure projects and to ensure that any local funds are spent in a timely manner.

The council suggests that parish/town councils be required to bid for this funding in place of simply receiving it. This would encourage proactive consideration by parish/town councils and timely spending. Where projects are not identified, funding would remain available to support the delivery of strategic infrastructure.

Question 35: In calculating the value of the Neighbourhood Share, do you think this should A) reflect the amount secured under CIL in parished areas (noting this will be a smaller proportion of total revenues), B) be higher than this equivalent amount C) be lower than this equivalent amount D) Other (please specify) or E) unsure. Please provide a free text response to explain your answer where necessary

In calculating the value of the Neighbourhood Share, Wokingham Borough Council supports the value remaining at current levels, which will naturally be a smaller proportion of the total revenue under the future proposed Levy regime. If parishes are widely involved in the production of the Infrastructure Delivery Strategy, the opportunity to explore effective joint funding of infrastructure should be investigated. Please also refer to the answer to Question 34, which suggests that parish/town councils could bid for funding instead of simply receiving it, to ensure proactive identification of projects.

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?

Wokingham Borough Council has no view on this, with the borough being fully parished.

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.

The administrative portion for the new Levy should be B) - higher than the equivalent amount existing under CIL. The new Levy system is proposed to have more complexity and multiple stages of calculation, payment, valuation, adjustment and opportunities for appeal, as well as potentially creating a wider range of charging rates and thresholds including for development types not currently liable for CIL. This will generate higher administrative costs and resource requirements. The administrative costs should be uncapped for the initial years of running the scheme until data is available on the cost of operating the new system in practice.

In addition, the government should provide a new burden funding to assist with the costs of introducing the new 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 countryside exemptions. How strongly do you agree the following should be retained:

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

- self-build housing; [Strongly Agree/Agree/Neutral/Disagree/Strongly Disagree]

If you strongly agree/agree, should there be any further criteria that are applied to these exemptions, for example in relation to the size of the development?

- residential annexes and extensions

Agree. Wokingham Borough Council agrees that it is a good idea to keep the exemptions for residential extensions and annexe buildings from the CIL (Community Infrastructure Levy) because it could help homeowners who want to build extensions or annexe buildings for family members, elderly parents, or to accommodate more people in their home with the lack of social housing stock in the market. Residential extensions could be exempt from the Levy, lowering expenses for homeowners and fostering flexibility in housing arrangements.

- self-build housing

Unsure. Keeping the exemptions for self-build dwellings under CIL may be seen favourably by many, since it might encourage people to construct their own homes and support self-sufficiency in the housing market. Exemptions from CIL for self-build housing may encourage people to invest in building homes that are customised to their unique needs and preferences, potentially fostering diversity in housing designs and boosting regional economies. Furthermore, self-build and custom build homes serve the potential opportunity of meeting increasing demands for affordable housing.

However, the practice has been noted of some developers who claim CIL self-build relief for cashflow purposes, sell the property (thus triggering a disqualifying event and requiring payment of the liable sum) and move on to apply for self-build exemption on subsequent planning applications. This process should be stopped, as it is abusing the system and causes unnecessary administrative burden. Those granted self-build exemption should be prevented from submitting subsequent self-build relief applications elsewhere within a set period of time.

- 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?
 - Limiting the extent of residential additions and annexations that qualify for exemptions, to prevent exploitation of the exemption for large-scale developments that might not be truly ancillary to the original residence.

- Setting a cap on the size or cost of self-build home exemptions can help to guarantee that they are only granted to small projects and not to larger constructions that might not be consistent with the exemption's purpose.

Wokingham Borough Council would support the introduction of criteria to limit the abuse of exemptions and ensure that larger scale developments fully contribute towards infrastructure requirements.

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.

Unsure. This would depend on the size and impact of the development, and the need for infrastructure generated.

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

Disagree. Wokingham Borough Council disagrees with the proposed application of a reduced levy rate being applied to smaller development proposals. The need for infrastructure improvements arises equally from a large site or multiple smaller sites. Removing the proportion of the levy from smaller sites will reduce the funding available for infrastructure and/or increase the burden places on larger developments. The proposal will also disproportionately impact local authorities which rely on gentle densification to deliver housing, placing a greater financial burden on the local authority of infrastructure is to be provided.

If the government continue with this proposal, they must recognise the potential for developers to 'game' the system by submitting multiple applications for up to 10 units to avoid paying Levy, rather than a larger application with would be Levy-liable. This has been seen to be the case regarding affordable housing and other mitigation.

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.

Lower Levy rates on small sites may have certain advantages, such as promoting development on small sites and retaining the strategy used by local authorities to seek in-kind affordable housing. There are possible hazards that should be carefully evaluated such as reduced funding for affordable housing particularly for lower income

groups left to be exploited by limited affordable housing stock and inadequate housing provision in the rural area, an imbalance in the distribution of affordable housing, with affordable homes being concentrated in certain areas, while other areas, particularly rural areas with smaller sites, may have limited affordable housing options. This could exacerbate existing inequalities in housing affordability and access to affordable homes in rural areas. Furthermore, reduced Levy rates may prevent local authorities from requiring affordable housing in-kind from small sites, which could lead to the provision of affordable dwellings as cash contributions, which may not be as successful in guaranteeing long-term affordability.

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

Wokingham Borough Council has no comments in response to this question.

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.

Unsure. In the absence of greater information Wokingham Borough Council is unable to comment further. More detail is needed on matters such as how occupations will be restricted if provisional levy not paid, will penalty payments apply to provisional and final levy, and the proposed level of the financial penalty.

Chapter 7 – Introducing the Levy

Question 44: Do you agree that the proposed ‘test and learn’ approach to transitioning to the new Infrastructure Levy will help deliver an effective system? [Strongly Agree/Agree/ Neutral/Disagree/Strongly Disagree/Unsure] Please provide a free text response to explain your answer where necessary

Wokingham Borough Council does not feel it can provide an option as to the effectiveness of the proposed test and learn approach. The council considers the proposed system to be complex and in this context it is hoped that the test and learn process will enable complexities and ambiguities to be ironed out.

Question 45: Do you have any views on the potential impact of the proposals raised in this consultation on people with protected characteristics as defined in section 149

of the Equality Act 2010? [Yes/No/Unsure]. Please provide a free text response to explain your answer where necessary.

Wokingham Borough Council considers that delays in receiving Levy receipts, compared with the current system, may have an impact on people with protected characteristics, e.g. where highways infrastructure and other infrastructure to support development is not delivered as early in the planning process as can be achieved now and not in a timely manner when required.

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