

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
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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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