

Levelling-up and Regeneration Bill

Key issues briefing: the Infrastructure
Levy

June 2022



Our Organisation

London First is a business membership organisation which convenes over 175 of the capital's leading employers across a wide range of sectors. We are united by a common commitment to the capital to make it the best city in the world in which to do business, working for the whole UK.

Part 4: Infrastructure Levy

Clauses 113-115, Schedule 11 – Infrastructure Levy

Given the complexity of the Infrastructure Levy (IL), the Government must publish its technical consultation on the Levy while the Bill goes through Parliament so the wide-ranging powers that the Bill provides the Secretary of State can be fully understood and scrutinised. At this stage, it is difficult to suggest amendments to how the system can be improved until further information is published. The comments below outline areas of general concern about the IL, particularly in relation to London.

London has some specific challenges when it comes to introducing the IL, including a unique development plan system (i.e. it has the London Plan – the spatial strategy for the city – and 33 local plans to take account of, extreme variation in land values, the retention of the Mayoral Community Infrastructure Levy (MCIL), and development being predominantly on brownfield land. These factors make a broad-brush system particularly challenging.

Complexity

We support the Government's aspiration to simplify and standardise the current S106 and Community Infrastructure Levy (CIL) system, which is complex and difficult to navigate. However, from the detail that is available about the IL, the new system looks set to create layers of complexity akin to the current system.

Uncertainty

One of the key differences between CIL and IL is that CIL is payable upon commencement and IL would not be payable until completion. Bearing in mind that IL liability will be significantly higher than CIL liability, this means that there is huge scope for variation in the final amount due depending on market conditions in the intervening period, particularly on larger projects that may take many years from commencement to completion. This means that, at the point the developer is going to push the button to start on site, they are carrying considerable risk regarding their final GDV, IL liability and likely profit. And increased risk at that stage will make it more challenging to secure funding to deliver the project. Of course, it could be argued that the final IL liability may decrease compared to early valuations, and this would favour the developer, but ultimately having that additional risk in the system could impact project financing, particularly in uncertain times, and thus hinder delivery.

Flexibility

Rate setting for charging schedules in London will be complicated given the vast range of land values even within a single borough. The challenge of finding an appropriate middle ground for the Levy whereby less viable developments are not put at risk, whilst ensuring that rates are high enough to maintain existing levels of infrastructure contributions and affordable housing, will be particularly acute in the capital because of this. We therefore welcome the flexibility that has been introduced for charging authorities to set variable

rates for different land uses and different locations within their authority areas. This must be maintained and should not be watered down.

Viability negotiations

The proposal to calculate the IL as a percentage of Gross Development Value (GDV) at project completion does not overcome the existing problem of lengthy viability negotiations. Instead, those viability negotiations will shift from when a development starts on site to when it is completed (with interim valuations taking place during the process). These negotiations would remain complex and potentially contentious, and the additional valuations needed throughout the process have the potential to lengthen, rather than shorten, the overall timeframe.

Infrastructure delivery

The IL is predicated on developers paying the Levy and, generally, leaving the delivery of infrastructure to local authorities. This will create significant risk for developers who, in some instances, may not be able to progress construction until an item of infrastructure has been delivered even though they are not in control of it. This approach will also pose considerable challenges to local authorities who must become infrastructure providers, potentially having to borrow against uncertain future IL receipts to deliver local infrastructure projects. This means infrastructure may not be in place when it is needed and makes it difficult for developers to make informed investment decisions.

Sustainability

The IL, as currently constructed, would discourage developers from re-using and extending existing buildings (generally a better outcome in terms of sustainability and carbon calculations), as it will be based on the total GDV of the scheme rather than, for example, just the GDV of an additional storey added to an office block. This is of particular concern to development in cities, most of which is re-development on brownfield land.

S106 agreements

S106 of the Town and Country Planning Act 1990 will not be revoked, and the Government has committed, in the Policy Paper accompanying the LURB, to “*Detail the retained role for section 106 agreements to support delivery of the largest sites*”. Given the complexity of delivering mostly brownfield development in London, the retention of S106 is welcomed, however it is clear that its use will be restricted compared to the existing situation. Accordingly, specific thresholds and/or tests should be made public at the earliest opportunity so there is better understanding of how the new system will work in practice. This is critical to understanding how the new Levy system will operate.

Affordable housing

The Government has said that the IL will deliver the same, if not more, affordable homes as the current system provides – but this will be a significant challenge in practice. A recent report¹ for Government analysing planning obligations and CIL showed that in 2018/19 67% of the total value of agreed developer contributions was for affordable housing worth £4.7 billion (and a similar level was achieved in 2016/17). With a more standardised approach, the IL must be set at a level that does not put off development coming forward on more complex (and thus more costly) sites, whilst LPAs will no longer be able to extract the maximum reasonable amount of affordable housing from each site.

¹ *The Incidence, Value and Delivery of Planning Obligations and Community Infrastructure Levy in England in 2018-19*, MHCLG, 2020

Specifically in London, the Mayor has introduced a Threshold Approach for planning applications with a residential component. On larger applications that are required to deliver affordable housing, provided they pass the threshold of delivering 35% or more affordable housing (and meet certain dwelling mix requirements) they can fast-track through the planning system without the need for any viability testing. This Threshold Approach has proven successful; it has sped up the planning process for policy compliant housing schemes and this has been welcomed by the development industry in London. With the new IL, the existing fast-track route, for schemes delivering 35% or more affordable housing, would no longer be available as several valuations would still be needed for every scheme.

However, it is striking that many schemes still need to follow the viability tested route because of the development costs and circumstances surrounding complex brownfield development in London. This reinforces the need for flexibility in London so that charging schedules reflect the intricate viability conditions across the capital.

If the Government is to ensure that the IL does deliver the same level or more of affordable housing, and other infrastructure contributions, than the current system, it is vital that receipts are ring-fenced in order that funds are not diverted away from affordable housing and infrastructure delivery. As things stand at present, the Bill states the IL regulations may 'permit or require' charging authorities to 'have regard' to the 'desirability' of ensuring that the level of affordable housing and funding is maintained (ref: Schedule 11 – Infrastructure Levy, Part 1 – Infrastructure Levy: England, clause 204G, part (2)).

Community support

The current S106 system shows clear community benefits that arise from each development, including physical infrastructure delivery and socio-economic benefits. If a tax is extracted from the development value and paid into a generic pot that could be spent on infrastructure anywhere in that local authority area, it will be much harder to convince communities to support development because there is no direct or tangible link to the scheme built and infrastructure that is delivered.