



Report to:	Cabinet	15 May 2023
Lead Cabinet Member:	Lead Cabinet Member for Economic Development	
Lead Officer:	Joint Director of Planning and Economic Development	

Response to The Department for Levelling Up, Housing and Communities Technical Consultation on the Infrastructure Levy

Executive Summary

1. This report seeks to agree a joint response from both City and South Cambridgeshire councils to the Department for Levelling Up, Housing & Communities' Technical consultation on the proposed introduction of an Infrastructure Levy that seeks to replace the current regime of developer obligations (Section 106 Agreements and Community Infrastructure Levy). The consultation is on technical aspects of the design of the Levy with responses informing the preparation and contents of regulations as part of the Levelling Up and Regeneration Bill.
2. In summary, the proposed response raises significant concerns about the proposals regarding the practical and financial implications that they could have for the Councils. In particular the response highlights concern regarding the timing of receipt of funding and the impact this could have on Councils having to bear the cost of borrowing to fund early infrastructure provision, and questions the realism of the approach proposed for strategic spending plans (referred to as Infrastructure Delivery Strategies). Beyond this, the proposed response highlights the need for the levy to secure appropriate provision of affordable housing alongside addressing infrastructure needs effectively so it is delivered when it is needed. The response also seeks local discretion on many issues, so that the levy reflects local circumstances.

Key Decision

3. No.

Recommendations

4. It is recommended that Cabinet:

- a. Agrees the joint response to the Department for Levelling Up, Housing & Communities' technical consultation on the Infrastructure Levy included in Appendix 1 of this report.
- b. Agree that any subsequent material amendments be delegated to the Lead Cabinet Member for Planning in consultation with the Joint Director of Planning and Economic Development.
- c. Agree that any subsequent minor amendments and editing changes that do not materially affect the content be delegated to the Joint Director of Planning and Economic Development in consultation with the Lead Member for Planning.

Reasons for Recommendations

5. The proposed joint response with Cambridge City Council addresses issues of importance to the Council in terms of the delivery of affordable housing and the effective and timely delivery of infrastructure under the operation of the proposed new Infrastructure Levy.
6. The joint response at Appendix 1 has been informed by engagement with officers across a range of departments from both Councils. After the Cabinet meeting considering the proposed response, the response will be agreed from the Cambridge City Council perspective via out of cycle decision by the Executive Councillor for Planning and Infrastructure. Any material changes to the response arising following the Cabinet meeting, including from the City Council's consideration of the issues, would need to be agreed by the South Cambridgeshire Lead Cabinet Member for Planning via an out of cycle decision aligned with that City Council decision.

Details

The Infrastructure Levy

7. The Government is seeking to amend the current system of developer obligations from new development by introducing a new Infrastructure Levy, which it intends to replace the Community Infrastructure Levy and hopes will replace the use of Section 106 Agreement for the vast majority of new development proposals. Currently neither South Cambridgeshire District Council nor Cambridge City Council have a Community Infrastructure Levy but continue to mitigate the impacts of development through the use of Section 106 contributions from major developments.
8. The Government considers the current system overly complicated, incapable of capturing land value uplift as a result of the grant of planning permission, and unable to provide the certainty required by developers of the likely cost to them, and for infrastructure providers, the funding likely to be secured.
9. The proposed Infrastructure Levy would be a locally-set, mandatory charge levied on the final gross development value of completed development (replacing the

existing system of developer contributions). Significantly, the new Levy would replace Section 106 for the purposes of securing affordable housing. Rather, it would introduce a new 'right to acquire', where local authorities would have to determine what portion of the Levy due would be for the delivery of on-site affordable housing.

10. The Infrastructure Levy will be part of primary legislation in the Levelling Up and Regeneration Bill. The Bill provides the framework for the new Levy, with the detailed design to be delivered through regulations.
11. The current consultation seeks views on technical aspects of the design of the Infrastructure Levy, not the principle of having a levy. Public consultation runs between 17 March and 9 June 2023. Following consultation and the Government's assessment of the responses, a final consultation on the draft regulations will be issued after the Levelling Up and Regeneration Bill achieves Royal Assent. Following the passing of the Bill, it is expected regulations will be introduced to Local Authorities (LAs) to 'test and learn' from late 2024/25, with early pilot councils potentially operating the Levy from 2025/26.
12. The Infrastructure Levy technical consultation includes 45 questions identified under 7 Chapters. The Chapters set out fundamental design choices around levy rates and minimum thresholds, charging and paying for the Levy, delivering infrastructure, delivering affordable housing, administration, and how the Levy should be introduced.
13. In broad terms the Levy will be charged on the Gross Development Value (GDV) of the property at completion per square metre and applied above a minimum development threshold. Levy rates and minimum thresholds will be set and collected locally, and local authorities will be able to set differential rates by land use and geographic areas reflecting local variations in viability and other issues.
14. The Levy will largely replace the negotiation of Section 106 (s106) planning obligations although S106 will be retained but for restricted purposes to secure matters that cannot be conditioned for or on complex sites to deliver infrastructure as an in-kind payment of the Levy.
15. The Government is committed to the Levy securing at least as much affordable housing as developer contributions do now. As the Levy payable will be non-negotiable, developers will be obligated to deliver these apportionments, affording greater protection to policy compliant levels of affordable housing.
16. To strengthen infrastructure delivery, the Bill requires local authorities to prepare Infrastructure Delivery Strategies. These will set out a strategy for delivering local infrastructure and spending Levy proceeds. The Bill will also enable local authorities to require the assistance of infrastructure providers, the local community, and other bodies in devising these strategies and their development plans.
17. Of significant concern, however, is the intention that the Levy is payable upon completion of the development. While this may help improve developer cash flow and improve the overall viability of a development, so that it could afford to pay

more towards required infrastructure provision, it means that key infrastructure might not be provided ahead of the development being occupied.

18. To overcome this concern, the Government is proposing that local authorities borrow against future Levy receipts to forward fund the required infrastructure.

Response to the consultation

19. A draft response to the consultation questions can be found at Appendix 1 to this report. It is proposed that the response is joint with Cambridge City Council. The proposed response raises significant concerns about the proposals regarding the practical and financial implications that they could have for the Councils..

20. The proposed consultation response highlights:

- a. the need for a mutually beneficial approach which enables developers to deliver new housing which is viable and maximises gross development value, and enables councils to mitigate the impact of development through the creation of sustainable new infrastructure at the appropriate time, which helps communities to thrive (questions 1 and 14).
- b. That the details of the scheme need to be consistent with the stated purposes of introducing a new Infrastructure Levy – That is that the Levy must achieve the same or greater affordable housing provision; must ensure sufficient funding can be secured to provide the necessary infrastructure required to support sustainable growth; and that it retains the ability for councils to seek satisfactory mitigation of site specific impacts.(Questions 1, 2, 5 of the Technical Consultation)
- c. Being clear about the infrastructure that a developer should provide as part of their development and that which is to be funded from the Levy.(Questions 1 & 2 of the Technical Consultation)
- d. The need to recognise that land values and land uses will vary across an authority area, and therefore applicable rates and the setting of thresholds for particular forms of development are best determined using local discretion.(Question 20 of the Technical Consultation)
- e. That the system must assist the delivery of infrastructure when it is needed, including the ability of local authorities to seek earlier payment of the Levy to facilitate this. (Question 18 –19 of the Technical Consultation)
- f. Whether it is reasonable to assume that local authorities would be willing to borrow against future Levy receipts to forward fund infrastructure, the risks with this approach, especially where district councils are not the delivery body (i.e. for highways, schools, healthcare etc). (Questions 21-22 of the Technical Consultation)
- g. Concerns that the system is overly complicated and would be difficult for laypersons to understand, potentially undermining public confidence in the

transparency of the system. (Questions 3 ,8 12,13 & 14 of the Technical Consultation)

- h. Whether the system would be open to potential abuse or manipulation to reduce liabilities on developers. (Questions 3,6, 7, & 14 of the Technical Consultation)
- i. Whether the Levy could be adapted to help address other concerns, such as land value engineering and development delivery rates .(Questions 16 & 17 of the Technical Consultation)
- j. Drawing attention to other potential pitfalls of the proposed Levy system and, where appropriate, offering up solutions that mutually beneficial for all parties.(Questions 21 of the Technical Consultation)
- k. That councils are best placed to determine potential exemptions to the Levy, or reduced rates, and what priority is to be afforded to which infrastructure. (Questions 39,42 of the Technical Consultation)
- l. The need to engage with county and other relevant infrastructure providers, as well as the wider community, to ensure all affected parties have a say what's required and where to meet local needs. (Question 28 of the Technical Consultation)
- m. The need for ongoing engagement with the councils to ensure the implementation of the Levy does not undermine existing planned development and growth. Questions 44 & 45 of the Technical Consultation)
- n. The need to adequately resource councils to meet the significant administrative burdens likely to arise in setting an Infrastructure Levy, operating it, and monitoring its effectiveness. (Question 37 of the Technical Consultation)

Options

21. The options available to members are:

- a. Agree to submit the response in Appendix 1,
- b. Agree an alternative response.
- c. Submit no response, although that is not recommended given the importance of issues raised.

Implications

22. In the writing of this report, taking into account financial, legal, staffing, risk, equality and diversity, climate change, and any other key issues, the following implications have been considered:-

Financial

23. There are no financial implications arising from the report as it is to approve a consultation response. However the final approach to the levy could have implications as it relates to the quantity and timing of developer funding to support infrastructure. Depending on implementation it could mean funding is available later in the development process, which could have implications for timing of delivery of infrastructure and borrowing to forward fund.

Legal

24. There are no legal implications arising from the report.

Staffing

25. There are no staffing implications arising from the report.

Risks/Opportunities

26. Whilst there are no risks and opportunities directly associated with the consultation questions, the delivery of infrastructure is a key issue for accommodating development needs sustainably in Greater Cambridge. The Proposed Levy must assist the delivery of infrastructure on time including the ability for local authorities to seek early payment of the Levy rather than assuming it is reasonable to expect local authorities to borrow to enable the provision of infrastructure at the right time.

Equality and Diversity

27. There are no equalities issues associated with this report to approve a consultation response. One of the consultation questions seeks views on equalities implications, and the proposed response highlights issues including the need to make information on the operation of the new system accessible.

Climate Change

28. There are no direct implications. However, the outcome of the consultation and changes to the planning system could have environmental and other implications. Some of the questions relate to how measures to address climate change could be taken account of in operation of the levy.

Health & Wellbeing

29. There are no direct health & wellbeing implications arising from the report. However, the outcome of the consultation and changes to the planning system could have implications for how and when infrastructure is delivered.

Consultation responses

30.. The joint response has been informed by engagement with officers from across a range of departments and from both Councils.

Alignment with Council Priority Areas

Growing local businesses and economies

31. The availability of infrastructure is an important element in meeting development needs, including the needs generated by employment development. The proposed response highlights the need for effective engagement with the Council so that development needs can be properly planned for.

Housing that is truly affordable for everyone to live in

32. The availability of infrastructure is an important element in meeting development needs, including the delivery of homes. The proposed response highlights the need for effective engagement with the Council so that development needs can be properly planned for.

Being green to our core

33. There are no direct implications from responding, but there are issues raised in the consultation that would impact on how the Council could respond to this priority area.

Background Papers

Background papers used in the preparation of this report:

The consultation webpage: [Technical consultation on the Infrastructure Levy \(GOV.UK\)](#)

Appendices

Appendix 1 – Draft Response to the Technical consultation on the Infrastructure Levy 2023

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Appendix 1: Draft Response to the Technical consultation on the Infrastructure Levy 2023