INFRASTRUCTURE LEVY TECHNICAL CONSULTATION

RESPONSE FROM HIGHBURY GROUP ON HOUSING DELIVERY

Introduction

The Highbury Group comprises an independent group of specialists from the public, private and independent sectors with a membership drawn from housing, planning and related professions; it offers advice and makes representations to Government and other agencies on a variety of subjects, with the aim of maintaining and increasing the output of housing, including high quality affordable housing.

Response

Our overall concern about the proposal is that it has failed to consider:

1. **Steps that can be taken to increase Land Value Uplift Capture (LVUC) by improving current methodsof value capture:**
    1.1. **By making the Community Infrastructure Levy (CIL) mandatory (less than half of LPAs have implemented CIL)**
    1.2. **By removing the exemptions to self-build, to schemes below the dwelling number thresholds, and to dwellings provided through permitted development rights**
    1.3. **By giving guidance on best practice in financial viability modelling and providing resources to LPAs to employ negotiating and monitoring staff**
2. **The overall potential for LVUC resulting from the transfer of nationalised development rights to private enterprise**
3. **The potential of the IL proposal to "lock-in" a materially lower recovery of LVUC, than the overall potential, for the next twenty years or more (ten years of implementation and probably another ten years of "stepping-up" the levy rate), and,**
4. **The need to redistribute resources from London and the South-East (currently delivering 53% of captured uplift including 80% of all CIL), noting that planning gain is a national resource and not just a local one.**

Using 2018/19 data and prices for England, we estimate that CIL and s106 currently deliver approximately £4bn of resource, which includes 24,500 affordable housing dwellings (46% of all affordable housing delivery)[1].

We estimate that the overall national potential for LVUC is in the order of £13bn pa. The current delivery is some 31% of this potential. Improvements to the current system could increase this to 45% (£6bn) and initial modelling of this proposed levy indicate that little more than this could be achieved despite the technically ambitious nature of the proposal.

The accompanying research with this consultation demonstrates the wide range of values and costs associated with assessing LVUC. For any given area and/or typology of development, a levy has to be set at a low enough level to avoid freezing out schemes of low value and/or high cost, and that level will by definition be insufficient to deliver the potential LVUC from schemes of higher value and/or lower cost. Furthermore, the abstract modelling of the maximum of a levy for

[1] Published research on the value and incidence of CIL and S106 focusses on volume and value of consents and agreements. Actual delivery falls some way below these approval figures.

a given area and typology, in the plan making process, will always make assumptions that are prudent, i.e. veer on the side of caution to avoid freezing out schemes and to avoid challenge.

The effectiveness of a levy depends on its granularity. At one extreme a nationally set single levy would deliver about 10% of the overall estimated potential LVUC. In theory, the finest grain would assess each scheme, or phase within a scheme, for its potential LUVC and this would deliver 100% of the overall estimated national potential LVUC.

The current number of financial viability assessments for planning obligation agreements is approximately 2,500 a year. The proposed Levy may require, say, 6 geographies within each LPA area, and 6 development typologies for each of these to model the proposed levies (and minimum £psm thresholds), making an estimate of 339 LPAs x6 x6, or 12,000 assessments. Roughly the same as current if each new levy amount last for five years.

Our conclusion is that the proposed levy will deliver much the same in LVUC as improvements to the current system, and with no reduction in the amount of financial assessment work, administration and negotiation required. Furthermore, the introduction of an administratively demanding proposal will delay current plan making (and CIL assessments) leading to a potential short-term reduction in LVUC compared to current delivery.

Notwithstanding the above, the rest of our response **in bold** follows the consultation questions on the assumption that the government's Infrastructure Levy(IL) proposal is to be pursued:

<u>Chapter 1 – Fundamental design choices</u>

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.

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.*
See response to next question.

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.*
Listing specific examples of integral infrastructure will be counterproductive – each development will have different requirements by size, location and type. A set of principles established in regulation or policy should provide guidance (para 1.28 a)). Integral infrastructure often

represents less than 15% of the main structure build costs (approximately 5-7% of GDV). It is in the interests of the developer to provide integral infrastructure as this contributes to market values. Integral infrastructure should not form part of the Levy; it forms part of the Total Development Cost.

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.*
But this service provision and revenue requirement should be directly associated with the infrastructure provided, for example landscape maintenance until maturity.

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*.
The Levy, whether in kind or cash, should only apply to infrastructure and affordable housing funded by the development. It should not be used to pay for local services that are not associated with this new infrastructure.

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. **.***
Training in construction skills during the development.

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.*
A development of 2,000 dwellings or greater is much more likely to require substantial in-kind infrastructure, e.g., schools.

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.*
Nothing to add.

<u>Chapter 2: Levy rates and minimum thresholds</u>

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.*
A levy should not apply to developments that are undertaken by public bodies for the provision of infrastructure or affordable housing, nor to registered providers providing affordable housing.

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?*
Dwellings delivered through permitted development rights bring the same need for growth in infrastructure provision and affordable housing as those delivered through planning consent.

These schemes should be taken out from permitted development rights, and be charged a levy appropriate in the area for redevelopment of existing buildings.

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.*
Following the principles of the proposed levy would imply that a range of levy rates, and minimum £psm thresholds, will be applied across the LPA. Further offsets would undermine that principle.

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.*

The "stepped" concept will require financial viability testing at each step. It would be helpful if a simpler form of scrutiny could apply to each change rather than requiring an examination in public. It could also be helpful to make the £psm threshold fixed into the future, so that it becomes an express form of "fiscal drag" and recognises that this element has stayed relatively stable over the last twenty years, and need not be indexed to build costs nor open market values. The estimate of £1,500 per square metre seems reasonable as the threshold to start paying the levy.

The Levy should be paid before or at the sale of each completed dwelling rather than at the point of completion of the whole scheme.

<u>Chapter 3 – Charging and paying the Levy</u>

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.*

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.*

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*
Provided that the LPA can issue a discharge notice and remove the local land charge for each plot at the time of sale.

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.*
If the provisional liability payment is not sufficient, then the local land charge should remain on a part of the development until final payment has been assessed and made. Pre-sales will need to be made contractually conditional on the developer gaining the discharge.

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.*
This would be in the interests of the LPA and developer and will facilitate final payment assessment.

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. **No. But the developer should have the ability to make payment at any time prior to the onward sale.**

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.*

<u>**Chapter 4 – *Delivering infrastructure***</u>

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.*
There are two elements to consider here. The first is the transitional arrangement from an upfront payment (or delivery of some site related infrastructure) to a payment on completion. This may be "smoothed" by borrowing or possibly by government grants to the authority. The second is the potential mismatch of amounts between receipts and off-site infrastructure costs, and in this case the LPA should build in a buffer to the Infrastructure Delivery Strategy costings.

Question 22: *To what extent do you agree that the government should look to go further, and enable specified upfront payments for items of infrastructure to be a condition for the granting of planning permission? [Strongly Agree/Agree/Neutral/**DISAGREE**/Strongly Disagree/Unsure] Please provide a free text response to explain your answer where necessary***.**
If the authority has the mechanisms described in response to Q21 above, then such conditions would be unnecessary.

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*.
The required Infrastructure Delivery Strategy must consider alternative funding sources for infrastructure (and timing). The amount of LVUC applied to infrastructure is only (and will only ever be) a relatively small part of all infrastructure resource needs for growth, renewal and improved productivity.

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.*

Question 25: *In the context of a streamlined document, what information do you consider is required for a local authority to identify infrastructure needs?*
Paras 4.18 to 4.22 sets out the minimum that needs to be considered in the IDS.

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*.
In the same way that wide consultation is a part of the making of a Local Plan and its Supplementary Documents.

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**

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 – In addition to the above the government should provide guidance to "bidding" infrastructure providers of the limits to the amount or proportion of their costs that can be met by LVUC.**

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.

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.*
The right to require is an important aspect of the proposal and should provide certainty for all parties. The risk is mainly in the setting of the levy (and minimum £psm threshold) and the % that should be used for affordable housing, at the levy setting stage. There may well be pressures on the LPA to set a low levy amount and a low AH output. The relevant parts of the IDS should be based on an assessment of housing and affordable housing needs by tenure type.

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.*
There should be no levy for AH on the AH part of the development. There is a case that AH should contribute to some of the other infrastructure growth needs. The private enterprise or open market parts of the scheme should contribute as is determined for the location and typology in that LPA area.

Question 32: How much infrastructure is normally delivered alongside registered provider-led schemes in the existing system? Please provide examples. **Usually that infrastructure has so far been limited to integral infrastructure.**

A. **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. The LPA should justify its "right to require" as part of the Levy setting, IDS preparation, and be informed by a housing needs assessment.*

Further points on Affordable Housing:

A. **The price paid by registered providers will need to be transparent. Currently price paid is often set in competition and usually exceeds the AH investment value on which the right to require should be modelled.**
B. **The change from the existing system of implied subsidy through s106 will become an expressed public subsidy in this proposal. This will require alteration to the accounting policies of registered providers.**
C. **There is a case that the AH subsidy should be secured by contract (as per Social Housing Assistance) and be subject to recycling provisions rather than have the tenure of the dwelling locked in perpetuity through planning obligations.**
D. **The "discount to market" for each type of AH is not fixed. Nor is it "linear" in respect of open market value of that dwelling. It is materially affected by changes in interest rates, changes to the rent standard, cuts or caps in rent imposed by government, and material changes in operating costs for example by increases in regulation. The levy calculations**

may well have to change each year to accommodate this, as indeed it would have to adjust for other material changes in the economics of housing supply for example an enhanced requirement on build costs by the proposed Future Homes Standard.

Chapter 6 – Other areas

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

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*
It should remain broadly the same in monetary terms as the current CIL arrangements and distinguish between neighbourhoods with and without a Neighbourhood Plan.

Question 36: *The government is interested in views on arrangements for spending the neighbourhood share in unparished areas. What other bodies do you think could be in receipt of a Neighbourhood Share in such areas?*
The definition should follow that used for Neighbourhood Planning.

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 amount should be lower than the 5% allowed in CIL as the absolute sums will be much greater than CIL amounts. Perhaps it should be set at the lower of £100 per dwelling or 0.033% of GDV and be treated as a development cost.

Question 38: *Applicants can apply for mandatory or discretionary relief for social housing under CIL. Question 31 seeks views on exempting affordable housing from the Levy. This question seeks views on retaining other countrywide exemptions. How strongly do you agree the following should be retained:*

- *residential annexes and extensions; [Strongly Agree/***AGREE***/ 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?

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.*
Sustainable technology requirements should be driven by Building Regulations and not planning obligations. The relief for AH should be withdrawn over seven years on a sliding scale if the AH is sold into the market (other than RtB or staircasing sales), and conversely market housing brought into affordable housing use within seven years of completion should have relief provided on the same sliding scale.

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*.

It is not clear in the proposal as to why small sites should be treated differently. The levy should be proportional to GDV for the given location and typology, no matter what the size of the scheme.

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*.

In theory the levy should be a help to SMEs as there will be certainty in the obligations and would not require the SME to have financial viability expertise for a given site.

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

Public infrastructure should not have to contribute to the levy.

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*.

The local land charge is a strong tool and should not be fully released until the final payment is received.

<u>Chapter 7 – Introducing the Levy</u>

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*

A small but representative cross section of LPAs should be invited to pilot the scheme alongside a research project which not only quantifies what would have been captured by the current s106/CIL arrangements but also assesses the maximum potential for LUVC as if each scheme had been assessed for financial viability. Given the lead in times for Levy setting and examination, time to deliver on new consents, and a final pilot outcome research report, it may be necessary to allow at least seven years before further roll 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*.

The increased certainty of Affordable Housing provision will help to reduce inequalities.

Further point:

A major difficulty in current s106 negotiations (and CIL modelling), and will be in IL setting, is the lack of market data on price paid for land, and for land and dwelling transactions between companies. Recognising that this will be a long-term project, a methodology should be developed now for recording and making land transactions, and intercompany transactions, available in the public domain by Land Registry. It would also be useful for Land Registry to record and publish the internal floor area at the point of transfer of each dwelling.

Contact: Duncan Bowie

Convener, Highbury Group on Housing Delivery

duncanbowie@yahoo.co.uk

https://e-voice.org.uk/highburygroup