

REPORT TO:	ENVIRONMENTAL AND DEVELOPMENT SERVICES COMMITTEE	AGENDA ITEM: 7
DATE OF MEETING:	30 MAY 2023	CATEGORY: (See Notes) DELEGATED or RECOMMENDED
REPORT FROM:	HEIDI MCDUGALL, STRATEGIC DIRECTOR	OPEN
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SUBJECT:	THE DEPARTMENT FOR LEVELLING UP, HOUSING AND COMMUNITIES CONSULTATION ON THE PROPOSED INFRASTRUCTURE LEVY.	
WARD(S) AFFECTED:	ALL	TERMS OF REFERENCE: (See Notes)

1.0 Recommendations

1.1 For Members to approve the submission of a response to the consultation in line with officer recommendations (detailed in Appendix 1).

2.0 Purpose of the Report

2.1 To present the details of the current Department for Levelling Up, Housing and Communities consultation on the proposed Infrastructure Levy. To consider the implications of the proposed amendments to South Derbyshire District Council, to approve a response to the consultation (detailed in Appendix 1) and approve submission.

3.0 Executive Summary

3.1 The government are consulting on significant changes to the way in which infrastructure to support development will be delivered in the future, with a move away from S106 and Community Infrastructure Levy's (CILs) to a single Infrastructure Levy.

3.2 The new system is expected to generate more infrastructure funds as it bases the value on the final sale price of development and will remove the ability of developers to negotiate contributions downwards. However, there are some concerns about how this will work in practice given that the majority of the funding will come towards the end of the development rather than required at key trigger points throughout development (as is currently the case) and that requirements need to be set out in advance which reduces the ability of the Council to respond and adapt to changing needs.

4.0 Detail

- 4.1 The Levelling-up and Regeneration Bill (the Bill) was published in May 2022, it is currently passing through parliament. The Bill seeks to replace the current system of developer contributions with a mandatory, more streamlined, and locally determined Infrastructure Levy. The government wants to make sure that local authorities receive a fairer contribution of the money that typically accrues to landowners and developers. This will support funding for the infrastructure such as affordable housing, schools, GP surgeries, green spaces and transport infrastructure to support connectivity that local communities expect to come with new development. The consultation was published on the 17th March and runs until 9th June 2023.
- 4.2 Under the current system of developer contributions, all local authorities can use discretionary s106 planning obligations to secure mitigations for development. In addition, all local authorities can charge CIL although South Derbyshire have not yet implemented this. Under the new system, introduced by the Bill, it will be mandatory for local authorities in England to charge the Infrastructure Levy in their area when it is implemented there. The Levy will apply to all types of development, aside from where exemptions apply. The Levy will replicate some existing exemptions from CIL. The consultation seeks views on the case for other suitable exemptions or reduced rates, including a proposal to apply exemptions to qualifying small sites and publicly funded infrastructure.
- 4.3 The Levy will be charged on the gross development value (GDV) of the property at the point of site sale or completion per square metre and applied above a minimum threshold. Levy rates and minimum thresholds (below which no Levy is charged) will be set and collected locally, and local authorities will be able to set different rates within their area which can be varied by the type of development (including brownfield and greenfield) and local authorities can create different charging zones.
- 4.4 Rates and thresholds will need to be set out in a Levy charging schedule which is subject to consultation and a process of public examination. To capture more value than the current system, local authorities will need to be able to maximise Levy revenues whilst maintaining the viability of development in their area. Having these rates set up front will remove, in most instances, the time-consuming negotiation of s106 agreements and provide considerably more certainty for local authorities and developers alike.
- 4.5 This will allow developers to price the value of contributions into the value of the land and for Levy liabilities to reflect market conditions. Levy liabilities will be based on GDV. It will also remove the need for planning obligations to be renegotiated if the is lower than expected; while allowing local authorities to share in the uplift if GDVs are higher than anticipated.
- 4.6 Basing the Levy on GDV requires a novel proposal around Levy payments as it's not possible to calculate the value until the development is finished. Indicative liabilities will be calculated using Levy charging schedules. These will set out expectations of Levy liabilities that reflect assumed values of a site. A provisional payment of the Levy will be made close to scheme completion. A final adjustment payment can be used on completion incorporating final values to ensure correct liabilities are discharged.
- 4.7 The Council will be permitted to borrow against future Levy proceeds, including from the Public Works Loan Board, to facilitate the forward funding of infrastructure. Cash reserves can also be built up across sites.

- 4.8 The Levy is intended to be more transparent, as Levy charging schedules will make the expected value of a contribution clear up-front. It will also make it clear to existing and new residents what new infrastructure will accompany development and to developers what infrastructure will be required to make development acceptable. The government argue that this will ultimately create a more consistent system, which removes unnecessary delay and provides additional funds to local communities. The Levy is a tax-like charge that is imposed on development similar to that currently in place for the Community Infrastructure Levy under the Planning Act 2008.
- 4.9 Infrastructure 'integral' to the successful functioning of a site, such as on-site play areas, site access and internal highway network or draining systems, will be delivered by developers and secured through planning conditions. Where this is not possible, 'integral' infrastructure will be delivered through targeted planning obligations known as 'Delivery Agreements'. All other forms of infrastructure – 'Levy funded' infrastructure – will be paid for through Levy revenues.
- 4.10 S106 will be retained in the new system but for restricted purposes. Sites will come forward through three different 'routeways' (core, infrastructure in-kind or S106 only) depending on their character.
- 4.11 Local authorities will be required to prepare an Infrastructure Delivery Strategy for delivering local infrastructure and spending Levy proceeds. The Bill will enable local authorities to require the assistance of infrastructure providers, the local community, and other bodies in devising these strategies and their development plans. The government believes that Local authorities will be able to take a more strategic and unified approach to infrastructure planning and delivery. That includes how they expect to spend Levy proceeds to accommodate the needs of the community such as through the provision of GP surgeries and schools.
- 4.12 The government is committed to the Levy securing at least as much affordable housing as developer contributions do now. A new 'right to require' will enable local authorities to set out what proportion of the Levy they want delivered as affordable homes and what proportion they want delivered as cash. As the developer will be obliged to deliver these apportionments, the 'right to require' will afford greater protection to policy compliant levels of affordable housing. That is because, under the existing system, levels of affordable housing are often negotiated downward on viability grounds, resulting in fewer units being delivered than a local authority initially sought. The non-negotiable nature of the Levy provides an opportunity to address this. The 'right to require' means that where local authorities set out how much of the Levy they want as affordable housing, that amount will be delivered without the risk of a downward negotiation.
- 4.13 On-site affordable housing can be delivered as an in-kind payment of the Levy through a new 'right to require' which will enable local authorities to secure affordable homes as a proportion of levy liabilities.
- 4.14 Imitating provisions under the existing Community Infrastructure Levy legislation, both a neighbourhood 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. Under the new Levy, this will be a smaller share in percentage terms than the Neighbourhood Share as it exists under CIL however, that is because the Infrastructure Levy will capture value that is currently captured through both CIL and s106. Therefore, it is envisaged that the Neighbourhood Share would be a smaller proportion of a larger amount of money thus it should not result in less value than the

existing system. Note that because South Derbyshire has not implemented a CIL that the Neighbourhood Share would be more than existing in any event.

- 4.15 The government is intending to introduce changes to the Levy over an extended period through a 'test and learn' approach. With the Levy being introduced in a minority of local authorities in the first instance to refine the system prior to a nationwide roll out which is anticipated to commence in 2029 and conclude in 2032. Separate to the consultation the government are inviting interest from authorities who wish to become a 'test and learn' authority (with likely changes to begin being implemented in 2025).

5.0 Financial Implications

- 5.1 None directly arising from this report.

6.0 Corporate Implications

Employment Implications

- 6.1 None directly arising from this report.

Legal Implications

- 6.2 None directly arising from this report.

Corporate Plan Implications

- 6.3 None directly arising from this report.

Risk Impact

- 6.4 None directly arising from this report.

7.0 Community Impact

Consultation

- 7.1 None.

Equality and Diversity Impact

- 7.2 None directly arising from this report.

Social Value Impact

- 7.3 The Council's response to the government consultation will potentially influence the level of infrastructure delivered within the district in the future. This includes the provision of affordable housing and other infrastructure required to ensure that communities are sustainable and healthy.

Environmental Sustainability

- 7.4 The Council's response to the government consultation will potentially influence the level of infrastructure delivered within the district in the future. This includes publicly accessible green space, flood mitigation measures and infrastructure to support active travel all of which should help to mitigate the impact of climate change.

8.0 Conclusions

- 8.1 A response in line with the officer recommendations detailed in Appendix 1 should be submitted to the Department for Levelling Up, Housing and Communities consultation on the Infrastructure Levy.

9.0 Background Papers

APPENDIX 1: Consultation Questions and proposed Council response.

Technical Consultation on the Infrastructure Levy – [Consultation document](#)