**Information for Unitary Councillors**

Sheet Number:

2022-27/56

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| **From:** | **Nick Tait** |

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| **Relevant ELT Director and sign-off date:** | Paul Hickson, Service Director for Economy, Employment and Planning (22nd June 2023) |  |

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| **Date:** | **29th June 2023** |

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| **To:** | **All Unitary Councillors**  |

**National Technical consultation on the Infrastructure Levy**

Context

The Infrastructure Levy is the proposed reform to the existing developer contributions system which comprises Section 106 planning obligations and the Community Infrastructure Levy (England only) and has been subject to a recent technical consultation, to which the Council responded. The principle was previously consulted on as part of the wider planning reforms set out in the Planning for the Future White Paper (2020). The more recent consultation was not therefore seeking views as to whether the new levy was supported in principle or whether alternatives such as further amendments to the existing CIL and s.106 regime might be preferable.

The rationale behind the proposed change relates to the Government’s desire to see developers pay a ‘fairer share’ for affordable housing and local infrastructure such as roads, schools, and doctors’ surgeries etc. The Infrastructure Levy will be a locally set and mandatory charge levied on the final development value of completed development. By charging the Levy on the value of completed development, the sum collected will increase as development prices increase and reduce as prices fall. This, in theory, makes the Levy more responsive to market conditions than the existing system of developer contributions and therefore when values increase it should result in more funding for infrastructure.

The recent technical consultation looked to inform the design of the Levy and of the future regulations that will set out its operation in detail. A subsequent consultation on the drafting of those regulations will be published in due course. A phased 'test and learn' process is planned over a period of about 10 years, to provide Local Authorities and industry sufficient preparation time.

The Local Government Association, the County Councils Network and other bodies across the planning and housing sector have written to the Government asking them not to introduce the proposed Infrastructure Levy. They highlight significant concerns that the proposed levy will result in fewer, not more, affordable homes delivered, will expose councils to excessive levels of financial risks, and be increasingly burdensome and complex for local authorities to implement and manage. The signatories propose that retention and improvement of the current developer contribution system is the most appropriate solution ([LGA’s response to DLUHC’s technical consultation on the Infrastructure Levy | Local Government Association](https://www.local.gov.uk/parliament/briefings-and-responses/lgas-response-dluhcs-technical-consultation-infrastructure-levy)).

A key concern is that the proposed levy would not be ring fenced to infrastructure and affordable housing provision and could therefore be spent on other areas of service provision, hence the suggestion that less affordable housing might be provided.

Whilst any mechanism that secured additional funding towards essential infrastructure and affordable housing is welcomed, introducing a new and complex levy has no guarantee that this objective will be achieved. The Council’s response to the consultation (see below) has highlighted similar concerns to those of the LGA in terms of financial risks and complexity of the new levy. Additionally, it has raised concerns that the levy might be used to fund other areas of service provision and suggests that the definitions for what the levy can be used for need to be tightly defined and prioritised on infrastructure needed to support development and affordable housing.

Additionally, currently there are already established mechanisms to secure additional contributions for affordable housing should development value increase (review clauses in s.106 agreements). The proposed levy also does not directly address the key issue of land valuation. For greenfield sites it is not uncommon for land to be valued at between 10 and 20 times existing use value and whilst in theory development costs and contributions should reduce this uplift, this rarely happens in practice. A mechanism to secure a greater proportion of this uplift for delivering infrastructure and affordable housing would potentially be more effective than a new levy but currently the Government are not pursuing any initiatives in this area.

Main Issues & the Somerset Council response to the technical consultation

The Council submitted a detailed response to the technical consultation on the 9 June 2023.

In the Council response concern was expressed about the timing of the receipt of monies and the divergence between Infrastructure Levy payments and delivery of associated infrastructure projects. One of the difficulties would be around forecasting future Levy receipts and the potential need to fund infrastructure in advance of these receipts. Borrowing against receipts to deliver infrastructure if the amounts are unknown would be challenging and potentially result in delays in provision. More importantly, there are currently considerable constraints on any further Council borrowing and the response highlights there will be considerable challenges if Councils are required to fund infrastructure in advance of levy receipts. It is felt that there needs to be considerably greater thought as to how the Levy will deliver infrastructure when it is needed. This could include upfront payments/phased payments where local circumstances justified this approach.

Below table provides a summary of the main issues and headlines in terms of our SC response.

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**Summary of Somerset Council response to the technical consultation on the Infrastructure Levy**

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| Topic   | Response   |
| **Fundamental design choices**  |
| * Scope of the Levy
* Types of infrastructure under the Levy
* Use of Section 106 & routeways

  | The Levy will apply to all types of development, aside from where exemptions apply. Response: * agree with the suggested definition of ‘development’.
* consider ‘integral’ infrastructure (for example: on site public open space, sustainable urban drainage etc) should continue to be provided directly by developers - outside of the scope of the Infrastructure Levy. SC notes the requirement of a definitive definition of ‘integral’ infrastructure deemed in regulations or policy – to avoid dispute.
* support the ability to define ‘integral’ infrastructure based on local circumstance.
* with regard to the Levy providing for non-infrastructure items such as service provision (e.g. public transport services, social care, subsidised childcare schemes), the response indicates that it will be imperative that if the scope of the Levy funds is extended to allow for service provision, that the Levy is not seen as a mechanism to address wider service funding deficits. It is noted that tight governance would be required. Agree that Local Authorities should prioritise infrastructure and affordable housing need before non-infrastructure items.
* support local discretion for setting the ‘infrastructure in-kind’ threshold (i.e. development where s106 planning obligations will be
* used instead of the Levy – i.e. for strategic sites where integral infrastructure such as schools etc are required).
* advised that the role of Delivery Agreements to continue to secure matters such as phosphate mitigation, local labour agreements etc is essential.

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| **Levy rates and minimum thresholds**  |
| * Rate setting

  | * agree that the Levy should capture value uplift associated with new dwellings established under permitted development rights.
* support offsetting of the Levy for certain brownfield development with marginal viability.
* raise concerns that the increase in revenue generated by charging the Levy on GDV will be lost in resources to administer.
* support the ability to set different rates and thresholds across geographical areas.
* support the ability to ‘step’ the levy up/down in the future depending on impact of the Levy.
* support separate Levy rates relating to existing floorspace (i.e. subject to change of use).
* question how rate setting (i.e. preparation of evidence base etc) will be funded.
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| **Charging and paying the Levy**  |
| * Charging the Levy
* Payment of the Levy
 | * remain broadly in support of the GDV / Final Adjustment Payment process, however, acknowledges the uncertainties that remain inherent in the process and the difficulties this will place on estimated funds available for infrastructure programme delivery.
* raise concern that the site completion trigger for provisional liability payment could result in incomplete sites.
* raise concern Final Adjustment Payments may be avoided by developers and that the regulations need to provide a robust mechanism to allow Councils to recover unpaid Levy contributions.
* support early payment where applicant/developer has previously been enforced against in terms of financial contributions.
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| **Delivering Infrastructure**  |
| * Forward funding infrastructure
* The Infrastructure Delivery Strategy

  | * disagree that borrowing against Levy proceeds will be sufficient to ensure the timely delivery of infrastructure.
* disagree that specified upfront payments of the Levy should be enabled due to uncertainty this creates for developers.
* suggest that infrastructure providers should be required to engage in the process of identifying infrastructure needs
* support community involvement in establishing infrastructure needs
* agree that the Local Plan preparation stage forms a logical and resource efficient time to scope infrastructure requirements

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| **Affordable Housing**  |
| * Affordable Housing

  | * agree that the ‘right to require’ (where the local authority will set out the proportion of the Levy that must be delivered in-kind and

on-site affordable housing) will reduce the risk that affordable housing contributions are negotiated down based on viability grounds.  * that the non-affordable housing proportion of the Levy rate should be charged at a reduced rate on high percentage / 100% affordable housing schemes, to be determined by each Local Authority and rural affordable housing led sites exempt from the Levy.
* support ‘right to require’ rate being left to the discretion of the Local Authority based on local circumstance and does not consider there is a need for an upper limit to the %.

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| **Other areas**  |
| * The neighbourhood and administrative share
* Exceptions and reduced rates

  | * support retention of the Neighbourhood Share (where a % of funding allocated to parish with approved Neighbourhood Plan)
* support higher rates of administrative portion of the funds due to anticipated increased resource pressures.
* support the liability of self-build housing to pay the Levy (currently excluded) and residential annexes and extensions to continue to be excluded.
* In terms of enforcement, Stop Notices unlikely to be effective to enforce against missed payments.
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| **Introducing the Levy**  |
| * Test & Learn
* Transition to the new system

  | * support a ‘test and learn’ approach to roll out.

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