



Planning White Paper – Consolidated Infrastructure Levy including potential abolition of S106

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Pillar 3: Consolidated Infrastructure Levy including potential abolition of S106

- **Context**

- Government's updated [report on developer contributions](#) (August 2020) in relation to CIL and S106 in England in 2018-19 (£c.7billion)
- White Paper seeks to address common criticisms:
 - time spent negotiating agreements
 - "dark art" of viability discussions
 - some perceptions of inefficiency and inconsistency in capturing land value uplift of the current system

- **Immediate Term Proposals**

- Immediate term minor changes to the CIL Regs to allow First Homes to be eligible for relief like other types of affordable housing



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- **Proposals for new mandatory consolidated national Infrastructure Levy (nos. 19 to 22)**
 - Nationally set levy as a fixed proportion of the final development value (or an assessment of the sales value if development is not sold e.g. rental homes)
 - To be set nationally in a single rate or area-specific rates, with an aim of increasing national revenue compared to the current system. Revenue to continue to be collected and spent locally
 - Paid at the point of occupation (not commencement) but figure based on the applicable rate at the point planning permission is granted
 - Would cover all use classes and development above a certain value-based viability threshold, reflecting **average build costs per sqm, with a “small fixed allowance” for land costs**
 - Would include affordable housing (on site “in kind” provision or on-site or off-site land would count as an offset against the levy – see later slide) and all other S106 planning obligation contributions.
- Proposed that S106 agreements would be abolished



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- **Proposal for new mandatory consolidated national Infrastructure Levy**
 - Would apply to changes of use which require planning permission or are PD - including office to resi conversions, not just new floorspace – big change from CIL
 - Maintain current CIL exemption of self and custom build from the new levy
 - The Mayor of London's CIL and potential Combined Authority CIL would still be retained
 - In low value areas, viability threshold may not be exceeded so no or low levy; in higher value areas, viability threshold would be exceeded more so higher levy
 - Allow Local Authorities to borrow against Infrastructure Levy so they could forward fund infrastructure (and incentivises them to do so) but note that funding may be used more flexibly than CIL including on council services or reducing Council Tax and a proportion may be used to fund core planning services so may not all be spent on infrastructure
 - Not clear (other than for AH) whether works in kind by developers would be an offset
- **Alternative option**
 - Infrastructure levy optional and set by LAs but as cannot use S106, would be an incentive to impose the levy



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- **On-Site affordable housing “in kind” offset against the levy**
 - On site in-kind provision would count as an offset against the levy. Could be made mandatory where an authority has a requirement, capability and wishes to do so
 - LAs to have the “means to **specify** the forms and tenures of the on-site provision, working with a nominated RP”. RP buys unit at a discount and the discount against market rate would be the in-kind offset against the levy
 - First Homes discount to market when sold direct to the customer would offset the levy
 - Dynamic response options in relation to a market downturn:
 - LAs could be allowed to “flip” a proportion of affordable units back to market units where the affordable housing in-kind offset has become greater than the levy itself.
 - Alternatively, the developer would have no rights to reclaim overpayments.
 - Government could provide standardised **agreements** to codify risk sharing
 - If no RP wants the units due to poor quality, LA have the option to revert back to cash contributions



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- **Alternative “right to purchase” option for on-site affordable housing**
 - Right of first refusal for LA or RP to buy up to a set proportion of on-site units (on a sqm basis) at a discounted price, broadly equivalent to build costs
 - Proportion would be set nationally and developer would have discretion over which units were sold in this way
 - Threshold for smaller sites, below which on-site delivery would not be required and cash payment could be made in lieu
 - Where on-site units were purchased, these could be used for AH or sold on or back to the developer to raise money to purchase AH elsewhere. LA could use levy funds or other funds to purchase units



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Issues

- **Standard rate averaging drawbacks:** Standard percentage rate of development value is a blunt instrument with an inherent “averaging problem” i.e. seeking to reconcile different site costs & values characteristics e.g. greenfield v urban. End up with either a lowish rate (but then no S106 top up so lose out) or a higher rate that allows exceptions but that then re-introduces some negotiation
- **Phasing clarity:** Phasing and timing of payments for large and phased developments needs explanation (e.g. occupation of a block, phase or unit?)
- **Any better than CIL?** Same discounts and exemptions? Will require better legislation and a less-complex procedure than CIL to be any better. Latest CIL reforms were well received...
- **Levy can be used for wider purposes** - risk levy may not be spent on infrastructure need created by the development
- **On-Site AH** – Absent S106 agreements, agreements still likely to be needed regarding the AH specification and terms/value of transfer so why not keep S106 agreements?



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Issues

- **Wider role of S106 agreements:** S106 agreements do more than just secure payment of contributions and delivery of a specific affordable housing percentage e.g.
 - secure affordable housing in perpetuity by legally binding the land and can give local people priority in taking an affordable dwelling
 - secure sustainable travel methods, encourage the employment of local people in development construction jobs, provide retail units at an affordable rent and secure on-site facilities such as open space, schools, doctors' surgeries and community facilities
 - secure mitigation which cannot easily be conditioned on a planning permission, such as the payment for air quality monitoring stations and the payment for ecological off-setting land
- **In-kind non AH works:** will there be an offset in relation to all on-site “in kind” infrastructure provided, as is being suggested for AH, e.g. schools, GP surgeries etc?



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Opportunities

- ✓ Allow levy to be worked out for each LA area, not nationally, to avoid “averaging problem”. Give clear methodology in national guidance
- ✓ Allow levy to be spent on AH & focus on the detail of in-kind on site AH provision & offset
- ✓ Do charge levy on occupation to eliminate viability reviews and reduce complexity
- ✓ Do allow (and don't forget the CIL lessons learnt re) payments by instalments, works in kind for all works (not just AH) and exemptions carried forward from CIL
- ✓ S106 Agreements could still be slimmed down significantly and a national model form produced (and therefore timescales speeded up) due to the levy including AH but do not abolish S106 agreements as they perform other important roles and will be needed in some elements of AH agreements with RP's and LA's too
- ✓ Do provide for most/if not all of the levy to be spent on infrastructure
- ✓ Do allow LA borrowing against levy receipts but give guidance to LAs





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Thank you for listening

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