

Infrastructure levy: the new levy, infrastructure delivery strategies, and role for S106



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Introduction

- One of the survivors from the White Paper
- Most detail is to come in the regulations but Schedule 11 (which will insert a new Part 10A into the 2008 Act) is accompanied by a policy paper giving further information.
- <https://www.gov.uk/government/publications/levelling-up-and-regeneration-further-information/levelling-up-and-regeneration-further-information>

Headlines

- CIL and s.106 will be generally replaced for provision of infrastructure funding by new Infrastructure Levy (“IL”) to be charged as a fixed proportion of gross development value above a set threshold
- Rates will be set locally via charging schedules. LPAs will also be required to produce infrastructure delivery strategies
- Levy will be charged on the value of property when it is sold
- Goal is to secure at least as much affordable housing as developer contributions do now
- S.106 will be retained for “narrowly targeted” site specific infrastructure and delivery of the largest sites where infrastructure is to be provided in kind



The Bill: new levy

- Under s.204A, SoS will have power (with Treasury) to make regulations providing for the imposition in England of the Infrastructure Levy (“IL”).
- Subsection (2) provides that SoS must aim to ensure that purpose of IL *“is to ensure that costs incurred in supporting the development of an area and in achieving any purpose specified under section 204N(5) can be funded (wholly or partly) by owners or developers of land in a way that does not make development of the area economically unviable.”*



Key provisions

- S.204B - Local planning authorities are to be the charging authorities and must charge IL in respect of development in its area.
- S.204D (Liability) – arises on commencement of development (or when a person assumes liability in accordance with the regulations). Per (6), the amount of any liability is to be calculated “*by reference to the charging schedule which has effect at the time when planning permission first permits the development as a result of which the levy becomes payable*”.
- S.204E (interpretation of key terms) defines terms like “development” but also requires the regulations to set out further definitions.

Section 204G (Amount)

- S.204G – charging authorities must issue charging schedules setting rates or other criteria by which amount of IL chargeable is to be determined. Per (2), in setting rates or other criteria must have regard to

“the desirability of ensuring that—

(a) the level of affordable housing which is funded by developers and provided in the authority’s area, and

(b) the level of the funding provided by the developers,

is maintained at a level which, over a specified period, is equal to or exceeds the level of such housing and funding provided over an earlier specified period of the same length.”

Section 204G continued

- Per (4), in setting rates or other criteria, they must also have regard to (subject to specification in the regulations):
 - Economic viability
 - Actual or potential economic effects of matters affecting the value of land including the development plan, planning permission or provision of infrastructure
 - Previous provision
 - The charging authority's infrastructure delivery strategy.
- Detail of how the chargeable amount is to be calculated left to regulations; but provisions in subsections (7)-(8) are very broad.

Other provisions

- ss. 204H-M provide for preparation, examination and adoption
- ss. 204N defines infrastructure to which the receiving authorities must apply IL
- ss. 204O-P provide for a duty to pass receipts to other authorities or persons.
- ss. 204R-V cover collection, enforcement and appeals
- ss. 204W-Y give power to SoS to issue guidance, direct exemptions or review.

Infrastructure delivery strategy

- Another requirement on charging authorities. Regulations will set out detail of what is to be required but they must
 - “*set out the strategic plans (however expressed) of the charging authority in relation to the application of IL*”
- They will require examination with the detail to be set out in the regulations and in guidance.
- Policy paper indicates that regulations are likely to “*enable local authorities to require the assistance of infrastructure providers and other bodies in devising these strategies, and their development plans.*”



Retained role for s.106

- S.204Z1 provides that the regulations may make provision for interrelation with CIL and s.106 but no detail. Policy paper says regulations will:
 - “Require developers to deliver infrastructure integral to the operation and physical design of a site – such as an internal play area or flood risk mitigation. Planning conditions and narrowly targeted section 106 agreements will be used to make sure this type of infrastructure is delivered.”
 - “Detail the retained role for section 106 agreements to support delivery of the largest sites. In these instances, infrastructure will be able to be provided in-kind and negotiated, but with the guarantee that the value of what is agreed will be no less than will be paid through the Levy.”

Thank you for listening

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