



Technical Consultation on the Infrastructure Levy: Historic England Consultation Response

Historic England is the Government's statutory adviser on all matters relating to the historic environment in England. We are a non-departmental public body established under the National Heritage Act 1983 and sponsored by the Department for Culture, Media and Sport (DCMS). We champion and protect England's historic places, providing expert advice to local planning authorities, developers, owners and communities to help ensure our historic environment is properly understood, enjoyed and cared for.

We welcome the opportunity to submit a response to this consultation on technical aspects of a proposed new Infrastructure Levy, which forms part of the Levelling Up and Regeneration Bill. Our key points are set out below, with further clarification provided within our responses to the questions:

- (i) We request that the scope of the 's106-only routeway' is extended to cases involving enabling development¹ in relation to heritage assets
- (ii) For other cases, we request that flexibility is retained within the system so that impacts on the historic environment can be addressed as appropriate using s106/Delivery Agreements alongside the Levy
- (iii) We believe that the new system should promote regeneration and the reuse of existing buildings, in particular in relation to heritage assets, and that this should inform further exploration of mechanisms such as Levy offsets and variable rate setting to achieve this.

Historic England would be pleased to assist further with the development and implementation of a new Infrastructure Levy regime, in particular:

- The way in which cases involving enabling development in relation to heritage assets will be dealt with
- The ways in which offsets and variable rate setting may help to incentivise regeneration and reuse of existing buildings in relation to heritage assets
- How regulations and guidance could ensure that the Infrastructure Delivery Strategy will form part of a local authority's positive strategy for heritage (as required by the National Planning Policy Framework)
- Ways in which the Neighbourhood Share may be distributed in unparished areas to the benefit of local heritage.

¹ As defined in paragraph 208 of the National Planning Policy Framework, enabling development is development that would not be in compliance with local and/or national planning policies, and not normally be given planning permission, except for the fact that it would secure the future conservation of a heritage asset.

Chapter 1 – Fundamental design choices

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].

Yes:

Historic England considers it to be of great importance that legal agreements (s106 agreements or new Delivery Agreements) are retained alongside the Infrastructure Levy as a flexible tool for dealing with matters that cannot be secured by planning condition or through the Levy.

S106 agreements currently offer not only a means of obtaining financial contributions, but also a mechanism for securing other commitments that are necessary to make a development acceptable in planning terms. This includes matters with implications for the historic environment. For example, s106 agreements may be used to: secure the transfer of a heritage asset on a development site to a charity or community trust; as a means of securing the maintenance and repair of a heritage asset in association with enabling development (in cases where this cannot be ensured using planning conditions); or as a mechanism for securing on- or off-site mitigation/enhancement such as archaeological works, restoration of a heritage asset, or certainty over phasing of development, as well as providing for monetary contributions. We therefore request assurance that future Regulations will provide the necessary flexibility for important heritage matters to be secured through s106/Delivery Agreements.

Enabling development in relation to heritage assets.

It will be particularly important that cases involving enabling development can be brought forward outside of the Infrastructure Levy. This refers to development that would not be compliant with local and/or national planning policies (as indicated in paragraph 208 of the National Planning Policy Framework), and would not normally be given planning permission, except for the fact that it would secure the future conservation of a heritage asset.

The case for enabling development rests on there being a ‘conservation deficit’, such that the cost of repair or conversion of a heritage asset could not be met by its market value on completion, allowing for appropriate development costs. A typical example may be a housing proposal close to a listed building, but where the listed building’s long-term future can only be secured by using the uplift in land value resulting from the development. Bearing in mind the policy conflict (for example due to an impact on open countryside), as well as the need to ensure that any harmful impact on the significance of the asset is avoided/minimised, the enabling development should be kept to a minimum. In such circumstances, it is often therefore not possible to prioritise affordable housing or infrastructure (other than that which is essential for the scheme to function) over works to conserve and enhance the heritage asset. This is because it would further impact on scheme

viability and/or require more enabling development, thus intensifying the policy conflict and posing a risk to the future of the heritage asset. For the same reason, the application of the Infrastructure Levy to such schemes is unlikely to be appropriate, and s106 agreements will continue to be an important mechanism.

Question 3: What should be the approach for setting the distinction between ‘integral’ and ‘Levy-funded’ infrastructure?

Historic England favours the retention of some flexibility for negotiating and defining planning obligations. The concepts of ‘integral’ and ‘levy-funded’ infrastructure offer a useful frame for understanding the broad distinctions between two of the main ways in which planning obligations may be used. However, if rigidly defined and applied, there is a risk that some types of infrastructure may unintentionally be excluded from benefiting from planning obligations, including some types of heritage infrastructure. For example, it is not yet fully clear how heritage assets that are off-site, but are nevertheless impacted by the development, would be defined within this framework. It may therefore be preferable for the distinctions between ‘integral’ and ‘levy-funded’ infrastructure to be described in guidance, rather than defined in regulations.

Paragraph 1.40 indicates that within the ‘core Levy routeway’, use of Delivery Agreements will be subject to both restrictions in existing CIL Regulations and to ‘additional regulatory restrictions on use’. In our experience, CIL is not used as often as it might be to secure benefits for the historic environment. S106/Delivery Agreements would therefore continue to be important in circumstances where specific mitigations are required. Historic England therefore requests assurance that future Regulations will provide the necessary flexibility for important heritage matters, such as enabling development and on or off-site mitigation, to be secured through s106/Delivery Agreements.

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].

Yes:

Historic England’s [Good Practice Advice in Planning: The Historic Environment in Local Plans](#) identifies some of the potential roles of planning obligations in relation to heritage, such as:

- Repair, restoration or maintenance of a heritage asset(s) and their setting
- Increased public access and improved signage to and from heritage assets
- Interpretation panels/historical information and public open days
- Production and implementation of up-to-date conservation area management plans and appraisals
- Measures for investigation, preservation and display of archaeological remains and sites
- Provision of local capacity for the storage of, and public access to, archives resulting from archaeological and/or historical investigation

- Dissemination of historic environment information for public/school education and research, including museum displays for popularisation of archaeological discoveries
- Sustainability improvements (such as loft insulation) for historic buildings
- Public realm obligations, including enhancement of historic squares and spaces, registered parks and gardens, historic pavement materials, street furniture, removal of street clutter and installation of sympathetic lighting, etc.

Some of these may be considered infrastructure, while others may be more difficult to assign to one of the new Infrastructure Levy categories (integral or Levy-funded) and may therefore be considered 'non-infrastructure items'. Similarly, while some of these may be appropriate recipients for Levy funds, others may be better candidates for s106/Delivery Agreements.

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].

Local authority discretion:

Historic England considers that local authorities are likely to be best placed to provide a steer on which schemes will be suited to the 'infrastructure in-kind' routeway, within their own administrative areas. This could, for example, involve the identification of specific schemes (in practice there may be few in an area) or the setting of an indicative threshold in their Infrastructure Delivery Strategy.

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?

As with the distinctions between integral and Levy-funded infrastructure, the three routeways described may be more helpful as a guide to understanding the system, rather than as three rigidly defined routeways. Otherwise, there is a risk of creating a complicated and prescriptive system which reduces the ability of local authorities to respond to particular circumstances.

In relation to the use of Delivery Agreements in the 'core Levy routeway', paragraph 1.40 of the technical consultation indicates that any obligations these contain will be subject both to restrictions in existing CIL Regulations and to 'additional regulatory restrictions on use'. Historic England therefore requests that future regulations provide the necessary flexibility for important heritage matters, such as on- or off-site mitigation or asset transfer, to be secured through s106/Delivery Agreements on developments of a range of types and sizes.

We consider that cases involving enabling development are likely to be best suited to the 's106 only routeway', for reasons that we have detailed in our response to question 2. We therefore request that this routeway allows considerable flexibility for s106 to be applied to matters such as setting standards for conservation, timing of payments and phasing of development.

We are concerned by the statement on page 12 of the technical consultation that ‘the value of any agreement will need to equal or exceed the Levy liability had the site been subject to the core Levy routeway’. It will be important that any requirements or restrictions on the s106 only routeway do not further impact on the viability of schemes involving enabling development. On those sites, securing the future of an irreplaceable heritage asset has not just a financial value but also a social value for the community. More generally, on many sites following the s106 only routeway (such as minerals and waste sites) it will not be possible to calculate the equivalent Levy liability by merit of those schemes not having a m² (of built) floorspace.

Chapter 2: Levy rates and minimum thresholds

Question 9: Do you agree that the Levy should capture value uplift associated with permitted development rights that create new dwellings? Are there some types of permitted development where no Levy should be charged?

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?

We broadly welcome the principle of capturing value uplift from development delivered through permitted development rights. However, we would be concerned about the application of Levy charges should they impact on the viability of schemes where there is a clear benefit to the historic environment, and which may be negatively affected if the level of the Infrastructure Levy is set too high.

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].

Yes:

Historic England believes that the system of planning obligations should incorporate local flexibility to consider offsets in cases involving the conservation or enhancement of heritage assets. This reflects the steer within the National Planning Policy Framework that local authorities should set out in their local plan a positive strategy for the conservation and enjoyment of the historic environment, including heritage assets most at risk through neglect, decay or other threats.

In addition, we consider that differential rate setting should aim to incentivise the reuse and conversion of buildings, especially those of historic significance. Paragraph 152 of the National Planning Policy Framework indicates that the planning system should encourage the reuse of existing resources, including the conversion of existing buildings. Within the technical consultation, paragraphs 2.15-2.20 indicate that there will be scope for authorities to set different rates or thresholds for new build development, conversion of an existing building (a ‘regeneration rate’) or demolition and new build (a ‘replacement rate’). These factors suggest that in setting rates, local authorities may need to set the ‘regeneration rate’

lower than the 'replacement rate' to positively incentivise the reuse of existing buildings, in situations where this is appropriate. It is not clear at present whether the historic significance of buildings on site, or their embodied carbon, will explicitly be factored into Levy rate setting or implementation. Historic England would welcome further consideration of possible mechanisms for this.

Elsewhere in this response, we have highlighted the complexities surrounding the use of planning obligations in cases involving enabling development. Enabling development may itself be on greenfield land, while funding conservation of a heritage asset on a brownfield site. For these complex cases, the continued use of s106/Delivery Agreements will be more appropriate than use of the Levy.

Chapter 3 – Charging and paying the Levy

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].

In setting the Levy, local authorities will need to strike a balance between the need to fund infrastructure and the potential effects of Levy rates on the economic viability of development. Within areas of lower land value, levy rates if set too high could contribute to stagnation of the construction market and decay of the vacant building stock. This in turn may have adverse effects on historic buildings and sites, and on the communities who enjoy them and benefit from their use.

Annex A to the technical consultation highlights a risk that on some brownfield sites the Levy may not necessarily outperform the current system. Having regard to the Levelling Up agenda, it will be important that the government ensures that areas with low land values, and with associated viability issues and low Levy rates, will not be left short of funding for essential infrastructure.

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].

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?

Strongly Agree:

Where money is needed to contribute to the conservation and enhancement of a heritage asset (whether a site, structure or building) delay in securing this can result in further deterioration of the condition of the asset. This is particularly the case in relation to [Heritage at Risk](#) and in cases where urgent remedial work is necessary. In such circumstances there is therefore a strong rationale for the local authority to require payment of a proportion of the Levy as early as possible.

The same can be said in relation to s106 planning obligations for works to a heritage asset to be secured through enabling development. The s106 or Delivery Agreement will usually need to set a standard for the conservation works, and to make the funds for this available as early as possible in the course of the scheme. This would ideally

be early on and almost certainly before completion or occupation of the enabling development.

More generally, the ability to secure phased payments of the Levy in a way that is controlled using a s106/Delivery Agreement will be preferable to a single large payment on completion. This is particularly the case for larger sites to ensure that, should completion be delayed for any reason, it remains possible for the local authority to obtain funds towards important infrastructure.

Chapter 4 – Delivering infrastructure

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?

The strategic spending plan offers benefits as a way of identifying and prioritising key infrastructure items (or themes) as part of the local plan preparation process. Regulations and guidance to implement the Levy should explicitly recognise the importance of heritage as integral to much of our infrastructure: from railway stations and viaducts to historic streets, bridges, canals and other waterways, parks and public spaces. This will help to ensure that the Infrastructure Delivery Strategy forms part of the positive strategy for the historic environment required by paragraph 190 of the National Planning Policy Framework.

However, our experience to date has been that CIL is not used as often as it might be to secure benefits for the historic environment. Such specific matters may not arise, or may fail to be prioritised, at the time when a local authority is preparing its Infrastructure Delivery Strategy and strategic spending plan. We therefore welcome the indication after paragraph 4.21 of the technical consultation that priorities within the document will not be binding on a local authority as there will be a need to employ the Levy differently in response to the specifics of a development. We also support the principle that Infrastructure Delivery Strategies will be iterative documents that can be amended to reflect changing circumstances. As we have stated in our response to Question 2, it is also important that s106 is retained as an alternative mechanism of securing conservation or enhancement of heritage assets.

Question 25: In the context of a streamlined document, what information do you consider is required for a local authority to identify infrastructure needs?

The evidence that local planning authorities can draw upon to identify specific infrastructure items as potential recipients for Levy funding includes documents such as conservation area character appraisals and management plans, World Heritage Site management plans, and properties on both the national [Heritage at Risk Register](#) or any local heritage list maintained by the authority.

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]

Yes:

As well as consultation with the community, it will be important that other stakeholders such as local or county council services responsible for heritage matters (such as specialist conservation/heritage teams, county archaeologists and museum and archiving services) are engaged in preparation of the Infrastructure Delivery Strategy. This will ensure that any infrastructure needs are understood when identifying and prioritising themes or projects as candidates to receive Levy funding.

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**

Historic England supports the inclusion within Infrastructure Delivery Strategies of ‘infrastructure/types of infrastructure that are to be funded by the Levy’. We believe that improvements to heritage assets that are integral to social, economic or environmental infrastructure should be included as a type of infrastructure that may be funded through Levy receipts. In light of this, and the positive outcomes that can arise when taking heritage assets into consideration, councils should also consider whether any specific heritage-related projects within their area would be appropriate for funding through the Levy. This could include buildings, sites and structures identified in conservation area character appraisals and on the [Heritage at Risk Register](#).

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 – please explain your answer**

Guidance to local authorities would be beneficial, provided that this allows flexibility to respond to local circumstances. As stated in our response to question 26, it will be important that local or county council services responsible for heritage matters (such as specialist conservation/heritage teams, county archaeologists and museum and archiving services) are engaged in preparation of the Infrastructure Delivery Strategy.

Question 29: To what extent do you agree that it is possible to identify infrastructure requirements at the local plan stage?

While it is possible to identify some key infrastructure requirements and themes at the local plan stage, this will always be subject to changing circumstances, unplanned speculative developments, or subsequent identification of site-specific issues and impacts. We have discussed this briefly in relation to heritage in our response to question 24. For this reason, we welcome the fact that the spending plan will be iterative and non-binding. We also believe it is essential that s106 agreements are retained as a flexible mechanism for delivering matters not dealt with by planning conditions or the Levy.

Chapter 6 – Other areas

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

Yes:

If administered well in response to local issues and opportunities, the Neighbourhood Share presents a means of securing works of benefit to heritage-related infrastructure, and for conservation and enhancement of heritage assets.

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?

In unparished areas, bodies such as neighbourhood planning forums, local civic societies/trusts and County Gardens Trusts may be appropriate recipients of the Neighbourhood Share, in situations where local groups are properly constituted and equipped to manage the spending of Levy funds.

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].

In our response to question 11, we have set out areas where we consider that the Levy should be applied differently, i.e.

- (i) Local flexibility to consider offsets in cases involving the conservation or enhancement of heritage assets
- (ii) Variable rate setting to incentivise reuse and conversion of existing buildings, especially those of historic significance

(iii) Use of the s106 only routeway to deal with cases involving enabling development.

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

If other forms of infrastructure are exempted from the Levy, it will be important that there continues to be scope for s106/Delivery Agreements to be used to address on- or off-site impacts and infrastructure requirements in those cases.

Chapter 7 – Introducing the Levy

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]

Agree:

The proposed Infrastructure Levy represents a change in the process of seeking developer contributions, particularly for authorities that do not currently operate a CIL. The proposed ‘test and learn’ approach offers potential for a phased introduction and, if necessary, subsequent adjustments to the process. It will also assist in understanding the level of support required by local authorities to get their Levy in place. This will help to ensure that the new system for planning obligations is effective and retains the flexibility to deal with important heritage matters, including those that are dealt with using s106 agreements.

Another significant departure from the current system is the inclusion of conversions/change of use within development potentially subject to the Levy. This could bring many more developments involving heritage assets – including listed buildings – within the scope of the Levy. We therefore believe that further consideration should be given to the ways in which offsets and variable rate setting may help to incentivise heritage regeneration and reuse of existing buildings. Test and learn could present an opportunity to test and refine any proposed mechanism.

Historic England

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