

Infrastructure Levy Technical Consultation  
Planning Directorate  
Third Floor, Fry Building  
2 Marsham Street  
London  
SW1P 4DF

**By email only:**

[PlanningFeesPerformanceConsultation2023@levellingup.gov.uk](mailto:PlanningFeesPerformanceConsultation2023@levellingup.gov.uk)

9 June 2023

**Re: Infrastructure Levy Technical Consultation**

I am writing on behalf of the London Property Alliance (the “Alliance”). The London Property Alliance is an umbrella organisation for the City Property Association and the Westminster Property Association, the membership bodies and advocacy groups for the leading owners, investors, professional advisors and developers of real estate in the Cities of London and Westminster. Lists of the 400+ member companies (300 when combined given c100 are members of both associations) we represent are available [here](#) and [here](#).

The Alliance welcomes the opportunity to comment on the Department for Levelling Up, Housing and Communities’ (‘DLUHC’) consultation on the Infrastructure Levy. Our comments build upon the previous helpful discussions that Alliance representatives have held with members of your team, and our note sent to Laurence Martindale on 21 April 2022.

**Summary**

We have responded, in detail, to the consultation questions in the format requested, and this is enclosed at Appendix 1.

In view of the breadth of the consultation and the potential effects of the proposed changes, we also felt it would be appropriate to set out our key strategic areas of concern, in addition to the response to the technical questions:

1. **Use of GDV.** The Alliance remains concerned the proposed use of GDV as the basis for the charge. This is because of the very high existing standing asset values of buildings in central urban areas, including central London. To be deliverable, a proposed development needs, as a minimum, to exceed the value of the asset that will be upgraded or replaced, otherwise there will be no economic incentive to develop. Development may, therefore, have a very high GDV but only be marginally viable if it is to replace an existing standing asset with a value that is only marginally lower. If IL is applied as a percentage of that new GDV without taking account of existing values, as well as the costs associated with development, it could create a liability entirely disproportionate to the potential profits.

The technical paper on which the proposals is based does not contain any typologies that model commercial office or hotel development in London. Only four London-based typologies are considered at all, all of which are residential and one of which is green-field (Table 3.1 of the technical paper).

2. **Application to brownfield and urban sites.** Linked to this, the Alliance's concerns over the use of value, rather than profit, remain, particularly in the application of IL to brownfield sites, regeneration sites and central urban areas where there are existing assets.
3. Essentially, the Alliance agrees with the conclusions of the University of Liverpool study that the IL system may be functionable for green field residential development, especially in south east England, where there is a wide difference between greenfield values and the final sale price of residential properties. However, the Alliance considers the system design to be ill-suited to complex development and regeneration.
4. Most development sites in central London are already occupied and income generating. If implemented as proposed, or if the complex matrix of rates and thresholds are set incorrectly, IL will deter rather than enable development on these brownfield locations. A site may be unsustainable or undesirable, but if it is already occupied it will have an existing value. If IL is set such that the value of the new development does not exceed the value of the standing asset, after allowing for costs, development will not occur.
5. A high value development may, or may not, be profitable. The two not necessarily related. The design of the IL system potentially creates a liability that is only finalised at the end of a development that is based on the values finally achieved, without direct consideration of costs and whether, or not, that development has been profitable.

As set out in our previous paper, there may be circumstances where values increase during the delivery of development, leading to an increased IL liability, but costs do so more quickly (as has happened in the current inflationary environment). In these circumstances, the return to developers would have declined, as the costs would have squeezed margins, but the IL liability – which would only crystallise at the end of the development – would have increased.

This is likely to create substantial funding and investment risk.

6. **Complexity.** The Alliance recognises, and welcomes, the evolution of the system and the changes proposed to address some aspects of the issues set out above, particularly relating to the treatment of existing floorspace by alternative rates, and the indexing of the Minimum Threshold against cost price inflation.

Nevertheless, the Alliance is extremely concerned that the emerging system relies upon accurately setting a highly complex set of rates and thresholds. The variables that these rates will need to take into account include local geography, site size, proposed use, build costs, land values, profit, the nature of existing floorspace and whether demolition is proposed.

If the rates and thresholds are set incorrectly, and too high, development (or some classes or types of development) will not come forward. Conversely, the Alliance also recognises the risk that if the rates are set too low, especially on residential development, less funding for affordable housing, and for infrastructure, may come forwards than does currently, thus not achieving the Government's objectives to secure more funding.

Given the complex and varied nature of existing and proposed real estate assets, especially in central urban areas such as central London, where values and uses can vary considerably from street to street and submarket area to submarket area, the Alliance considers that setting these rates accurately is likely to be not only highly resource intensive and slow, but also practically impossible. There would, inevitably, be significant market distortions and deadweight loss.

This is also likely to lead to unintended consequences in terms of how applications are structured to manage the effects of IL, reducing transparency in the system and adding to the resourcing load on local authorities.

The retention of the Mayor's Community Infrastructure Levy for funding Crossrail 2 in London would also require both systems to work in parallel, further adding to the complexity.

7. **Uncertainty.** This complexity will give rise to considerable uncertainty. The application of an intricate matrix of thresholds and rates to complex redevelopment sites involving different uses and elements of existing, retained and new build floorspace will be very difficult to manage and inevitably will lead to disputes on liability.

Critically, for investors and developers whose developments are not subject to final sale, the final IL liability will not be established until after the completion of development and will rely on a subjective valuation, or agreement between valuers. This uncertainty will make development financing more challenging. Similar valuation issues will arise when the Right to Require is exercised.

8. **Affordable housing from commercial development.** Commercial development is not, generally, required to contribute to affordable housing. The Alliance recognises that IL receipts from residential development could be spent to deliver affordable housing, including through the Right to Require, as an alternative to the current s106-based system. It is, though, unclear as to whether commercial development would be expected to contribute to affordable housing in the same way.

This is an area that requires urgent clarification.

Seeking to maximise affordable housing contributions from commercial / non-residential development, in the same way as residential development, would represent a very substantial change to the economic context of commercial development. This would require significantly more consultation and testing to understand the wider effect that this would have.

The Alliance would be seriously concerned about the effects that this would have on continued investment in renewing, retrofitting and regenerating commercial properties.

9. **Transparency.** The Alliance is committed to improving public trust in the planning and development process. The Community Infrastructure Levy already creates distance and separation between development and the potential benefits that it delivers, by pooling receipts and allowing these to be spent centrally, rather than in direct connection with the development from which they arise. The IL will exacerbate this, both because of the system's complexity and because, as proposed, it will allow funds to be used for revenue funding as well as capital expenditure, so diluting further the link between new development and the delivery of genuinely new infrastructure, rather than the general funding of local authority services.

Whilst detailed responses to the relevant questions in the consultation are set out in this response, overall the Alliance considers that the IL is ill suited to complex urban areas. The Alliance does not consider that the IL, as proposed will provide a "more streamlined", "more efficient" and "clear" system that removes delay.

As recommended by the 2017 CIL Review, led by Liz Peace, the Alliance suggests that the example of London's existing Mayoral CIL could be extended nationwide to create a simple, flat-rate, levy that could increase the revenue raised by new development in a straightforward manner that minimised complexity and potential distortions. This could come alongside proposals that would streamline the use of existing provisions in s106, such as standardised clauses for some common s106 topics. This could be implemented using existing provisions with a minimum of disruption, whilst avoiding potential adverse effects both on new developments and on local authority resourcing.

The Alliance welcomes the opportunity respond to the consultation and trusts that both the general observations set out in this letter and the detailed responses to the individual questions overleaf will be taken into account should the development of the system proceed.

If it would be helpful to discuss any aspect of this letter further, please do contact me.

Yours faithfully



**Charles Begley** | Chief Executive  
**London Property Alliance**  
City Property Association | Westminster Property Association  
**Mob.** 07730 567443 | **Tel.** 020 7630 1782

 [London Property Alliance/ londonpropertyalliance.com](#)  
[citypropertyassociation.com](#) | [westminsterpropertyassociation.com](#) |

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## APPENDIX 1

### RESPONSE TO IL TECHNICAL CONSULTATION

**Question 1: Do you agree that the existing CIL definition of ‘development’ should be maintained under the Infrastructure Levy, with the following excluded from the definition:**

- developments of less than 100 square metres (unless this consists of one or more dwellings and does not meet the self-build criteria) – **Yes**
- Buildings which people do not normally go into - **Yes**
- Buildings into which peoples go only intermittently for the purpose of inspecting or maintaining fixed plant or machinery - **Yes**
- Structures which are not buildings, such as pylons and wind turbines. **Yes**

**Please provide a free text response to explain your answer where necessary.**

1. Yes. It is important to ensure the potential administrative complexities of the IL, which we identify elsewhere in our response, are not applied to all planning applications. The definition of “less than 100sqm” should be amended to be clear that developments involving existing floorspace of less than 100sqm should be excluded.

**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?**

Unsure.

**Please provide a free text response to explain your answer where necessary.**

2. We remain concerned that, in practice, the IL will become a source of taxation used for general revenue funding, and will no longer be linked, either through the planning system or in the perceptions of local communities, to ensuring that development mitigates its effect on local infrastructure and provides an appropriate contribution. Please see our covering letter.
3. We anticipate that development proposals will continue to be expected to provide additional infrastructure directly in addition to IL receipts.
4. We recognise that there will be some circumstances in which delivery of infrastructure outside of the IL will be appropriate and necessary. The system should allow for this. We are more concerned about the breadth of items on which IL receipts could be spent than to whether, or not, infrastructure could still be required outside of the IL regime, as posed by the question.

**Question 4: Do you agree that local authorities should have the flexibility to use some of their levy funding for non-infrastructure items such as service provision?**

No

**Please provide a free text response to explain your answer where necessary.**

5. No. We are concerned that the IL will become seen as a source of general revenue funding for local authorities and the receipts will not be focused on delivering the new infrastructure – including affordable housing – needed to enable development and expected by communities. This would further distance new development from the

benefits to which it can potentially contribute directly through s106, exacerbating an existing problem with CIL. Please see our covering letter.

**Question 5: Should local authorities be expected to prioritise infrastructure and affordable housing needs before using the Levy to pay for non-infrastructure items such as local services? [Yes/No/Unsure]. Should expectations be set through regulations or policy? Please provide a free text response to explain your answer where necessary.**

6. See response to Question 5. We do not consider that CAs should have the ability to divert IL receipts to non-infrastructure items.

**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].

**Please provide a free text response to explain your answer, using case study examples if possible.**

7. We consider the threshold should be set at a low level, potentially lower than the 500 unit threshold suggested within the consultation. We note that, in central urban areas, even provision of small pieces of infrastructure, such as public realm improvements, cycle parking and cycle routes, and other meaningful local improvements to the local environment can be best – and are often – delivered by developers alongside construction of the primary developments. Those developments may be considerably below the suggested thresholds but delivery of IL infrastructure as part of them may still be the most efficient and cost effective approach. The system should allow for this.

**Question 9: Do you agree that the Levy should capture value uplift associated with permitted development rights that create new dwellings?**

Yes

**Are there some types of permitted development where no Levy should be charged?**

Yes

**Please provide a free text response to explain your answer where necessary.**

8. Yes, where PD rights create new dwellings. The Alliance has, repeatedly, raised concern about the operation of PD rights that create new dwellings, including the proliferation of residential in an unplanned way, the quality of the residential accommodation created, and the lack of contribution such development makes to affordable housing provision. If the IL is to become the principal mechanism by which affordable housing is secured from residential development, residential development from PD should be within scope.
9. This is without prejudice to our overarching concerns regarding the IL expressed elsewhere in this letter.
10. The Association does not consider that the IL should be applied to other forms of PD. Crucially, it should not be applied to existing permitted development rights that allow for the change of use of commercial land uses. Introducing a tax liability – even if low level – on changes of use that currently require no, or limited, forms of approval and regulatory approval potentially would create a regulatory and compliance burden whilst discouraging innovation, flexibility and diversification.

**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?**

11. See response to Question 9. The IL should not be applicable to changes of use or other forms of minor development in commercial uses.

**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**

**Please provide a free text response to explain your answer where necessary, using case studies if possible.**

12. The implications of the IL for 'brownfield' development, which we take to include redevelopment of sites that are already occupied in central urban locations including central London, is an area of fundamental concern to the Alliance, as set out in our covering letter. The Alliance is seriously concerned that the proposed structure of multiple charging rates and thresholds for floorspace subject to changes of use and redevelopment is likely to be:
- highly complex and at risk of creating adverse or unintended consequences, especially on complex sites involving a combination of redevelopment, change of use and new building. Assessing and understanding the potential liabilities, given the range of rates and thresholds, is likely to be complex for developers and add considerable burden to local authorities. CIL is a comparatively straightforward system in comparison to IL, but there are already very considerable uncertainties and inconsistencies in the understanding and application of CIL. The Alliance is concerned these will be exacerbated by IL.
  - The Alliance is concerned the proposed approach could discourage the reuse and repurposing of existing buildings. If the use of existing floorspace alongside new floorspace creates uncertainties in the calculation of liabilities the promotion of such schemes is likely to be discouraged. This would strongly disincentivise the reuse of existing buildings at a time when other parts of public policy is seeking to promote the re-use of such buildings on environmental grounds, to reduce carbon emissions.
  - If the rates and thresholds applicable to change of use are set incorrectly, it would exacerbate this concern and potentially prevent the repurposing – or where appropriate redevelopment – of brownfield sites. These sites are, potentially, the most sustainable locations to accommodate new development but, as is recognised by the accompanying study, their 'viability window' is likely to be considerably narrower than greenfield development sites, making the risks of rates being set incorrectly considerably higher.
13. Whilst the Alliance would support additional offsets being enable, it does not consider this goes far enough in addressing what is a fundamental concern in the design of the IL system.

**Question 12: The government wants the Infrastructure Levy to collect more than the existing system, whilst minimising the impact on viability. How strongly do you agree that the following components of Levy design will help achieve these aims?**

- Charging the Levy on final sale GDV of a scheme **STRONGLY DISAGREE**
- The use of different Levy rates and minimum thresholds on different development uses and typologies **STRONGLY DISAGREE**
- Ability for local authorities to set 'stepped' Levy rates **UNSURE**
- Separate Levy rates for thresholds for existing floorspace that is subject to change of use, and floorspace that is demolished and replaced **STRONGLY AGREE**

**Question 13: Please provide a free text response to explain your answers above where necessary.**

14. As set out in our response to Question 11 and in our introductory remarks in our covering letter, the Alliance is seriously concerned about the implications of the proposed IL system on central urban locations including central London and other brownfield sites.
15. Existing values, and gross development values, in central London are high. This does not translate automatically to high developers' profit, because existing values are high as well. Most development sites in city centres, including

London, are already occupied, generate income and have a value as a result. Development is frequently only marginally viable, with it frequently being commercially sensible to leave high value, existing standing assets untouched if the value from of new development, allowing for costs, would not exceed the existing. Seeking to charge IL on proposed development value (GDV) without taking accurate account of costs, profit levels or, indeed, the value of the asset that is likely to be replaced, is likely to have a serious adverse effect on development that comes forward.

16. The Alliance does not consider that this can be adequately mitigated or managed by setting different rates for changes of use and the replacement of floorspace, and through minimum thresholds. Doing so cannot fully consider the heterogeneous and highly varied nature of property assets in this sort of location. Inevitably, the rates set will not be correct in some circumstances and the effect will be to preclude development coming forwards.
17. Notwithstanding the Alliance's position that the IL should not proceed as proposed, if it is to do so it is essential that different rates are applied to existing floorspace. The default position should be that this rate should be 0%, particularly where buildings are retained in some form of commercial use.
18. The Alliance recognises the importance of prioritising refurbishing and retrofitting existing buildings, rather than seeking to demolish them in all cases. Retrofitting existing building stock to improve its operational efficiency is essential to reducing carbon emissions from the built environment.
19. Frequently, the reuse of existing buildings will require planning permission, for example because of the addition of rooftop extensions, refacading, changes to plant systems, or for other reasons. Seeking to capture a percentage of the GDV created by repurposing or retrofitting existing floorspace, whether in isolation or as part of wider changes to buildings, could seriously discourage such proposals coming forwards.
20. The Alliance is also concerned that the system design could lead to complex unintended consequences, with developers structuring applications in such a way as to minimise or reduce liability. This would add significant additional complexity and resourcing requirements and make it less transparent to residents and local communities.
21. The Alliance recognises that where existing buildings are converted to residential use, an IL charge could be appropriate, in the same way that conversion of offices to residential would generally contribute to affordable housing.

**Question 14: Do you agree that the process outlined in Table 3 is an effective way of calculating and paying the levy?**

No.

**Please provide a free text response to explain your answer where necessary.**

22. This approach raises two principal areas of concern.
23. First, that the final IL levy will not be known until after the completion (and sale, if appropriate) of the development will mean that risk will remain very late into the development process. A liability that cannot be fully quantified until late in the process is likely to make raising development finance more challenging.
24. Second, it will also expose local authorities, who will be relying on the IL receipts to deliver some of the necessary infrastructure, to the same risk, in that they will not be able to quantify CIL income until the end of the development, which is likely to reduce the amount that they will be able to borrow.
25. These issues are likely to be exacerbated in the type of developments that are common in central London, where the developments are held rather than sold. In this case, the final value will depend on a subjective valuation, or valuations, rather than objective sales values, so exacerbating the uncertainty that will only be resolved after the completion of the development, as described in paragraphs 3.16 – 3.26 in the consultation document. The Alliance notes that this issue is recognised at 3.23, but the potential for significant uncertainty in IL liabilities at the conclusion of developments is a very significant concern.



26. Please also refer to our covering letter.

**Question 15: Is there an alternative payment mechanism that would be more suitable for the Infrastructure Levy?**

27. Yes

**Please provide a free text response to explain your answer where necessary.**

28. The Alliance welcomes the intention of moving IL payments until later in the development process.
29. Notwithstanding the Alliance's overarching concerns about the IL system, we suggest that fixing the IL liability at the "Provisional liability calculation and payment" point, removing the final adjustment, would go some way to mitigating this concern, although the issues around the need for subjective valuations for non-sale assets would remain. The IL levy could be payable at that point, or on sale, as appropriate.

**Question 20: Do you agree that the proposed role for valuations of GDV is proportionate and necessary in the context of creating a Levy that is responsive to market conditions**

30. No.

**Please provide a free text response to explain your answer where necessary.**

31. As set out in our response to Question 15 and our covering letter the Alliance has significant concerns about the use of GDV as part of the system, the number of valuation points created, and the risk of considerable uncertainty remaining late into the development process, especially for developments that are not sold.
32. To the list of valuation points required set out at paragraph 3.16 of the consultation, the Alliance would also add the valuation of affordable housing when the Right to Require is exercised, to establish the value differential between the market and affordable values.
33. The use of GDV will, create substantial risk and uncertainty, late into the development process, which will be exacerbated by the complex set of rates and thresholds that will then be applied to establish final liability.

**Question 30: To what extent do you agree that the 'right to require' will reduce the risk that affordable housing contributions are negotiated down on viability grounds?**

34. Neutral.

**Please provide a free text response to explain your answer where necessary.**

35. One of the Alliance's principal areas of concern is the lack of clarity as to how the IL will be applied to commercial development and the extent to which such development will be expected to contribute to affordable housing.
36. This is a key issue, on which the consultation is silent on the Government's intentions.
37. At present, commercial development, such as office, industrial, logistics, retailing, etc, is not, usually, expected to contribute to affordable housing, unless there are specific local policies requiring this. Commercial development in the City of London does contribute to affordable housing on a £/sqm, tariff-based, approach. Within the City of Westminster, this is not required.
38. It is unclear whether the intention is that commercial development would be expected to contribute to affordable housing in the future. The Alliance recognises the importance of delivering housing, including affordable housing, to support London's economic functions but considers that commercial development does not, directly, create a requirement or need for affordable housing in the same way as residential development, to promote genuinely mixed and balanced communities and to secure a range of tenure types.

39. Introducing a requirement for affordable housing on commercial development, by setting IL levels at a level similar to those for residential development, would very significantly change the economic context for these types of development. It would be a radical change in approach and would be likely to preclude certain types of development, that provides important economic infrastructure, from being delivered.
40. Before the introduction of IL it would be essential for the Government to address this uncertainty, in policy. In the Alliance's view, this would be best achieved by indicating that, in general, commercial development would not be expected to contribute directly to affordable housing and that rates should be set accordingly. As commercial development in urban areas generally involves replacing existing standing assets, with development being deliverable only on the margin, setting rates on the basis that commercial development should, generally, be making similar contributions to affordable housing as residential would simply prevent such development from being delivered.
41. It is vital that clarity on what could be a key change to the economic context of commercial development in urban areas is provided as early as possible.
42. Please also refer to our covering letter.

**Question 33: As per paragraph 5.13, do you think that an upper limit of where the 'right to require' could be set should be introduced by the government?**

Yes

**Alternatively, do you think where the 'right to require' is set should be left to the discretion of the local authority?**

No

**Please provide a free text response to explain your answer where necessary.**

43. The IL system should be entirely unambiguous that the Right to Require should only be applied to those developments providing housing, or similar, residential-style, properties. It should not be applicable to other forms of development, such as commercial offices, distribution, retail / hospitality, where no residential is proposed and where incorporating residential would be likely to pose very significant constraints to the design of the wider development.
44. Local authorities should not be given the discretion to apply the Right to Require to non-residential properties.

**Question 34: Are you content that the Neighbourhood Share should be retained under the Infrastructure Levy?**

45. Yes.

**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

**Please provide a free text response to explain your answer where necessary.**

46. The Alliance suggests that cultural, charitable and public (non-profit) educational institutions such as universities and colleges should also be granted relief from the Levy, or subject to zero rates. Imposing the same levy rates as on residential or commercial development would not be appropriate and would impose unnecessary strain on the finances of these organisations. Valuing floorspace that is created for cultural, charitable or educational purposes is also likely to be far more challenging. In view of this, the Alliance considers such space should be exempt from the rate.

**Question 40: To what extent do you agree with our proposed approach to small sites?**

47. Neutral

**Please provide a free text response to explain your answer where necessary.**

48. The Alliance agrees that a threshold approach to IL liability is required. Small scale applications, such as replacement plant, new entrances, changes to the external opinion of the building, etc, should not be subject to the IL. Valuing the effect of such changes by establishing the resultant GDV, and administering the IL system, is likely to be totally out of proportion to any receipts that could arise.
49. Such applications should be completely excluded from the system.
50. The Alliance recognises that smaller developments, where floorspace is being created, may need to be treated differently, although it notes that doing so by setting another set of rates for smaller scale development (presumably encompassing the three principal charging rates, as well as two minimum threshold rates, set by use) would add yet further complexity in setting up the system and resourcing requirements in administering the system, compounding the Alliance's principal concern that the proposals are overly complex and impractical.

**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?**

Disagree

**Please provide a free text response to explain your answer where necessary.**

51. Notwithstanding its serious concerns about the design of the IL system, if it is to be introduced as proposed the Alliance would support this being done on a phased and gradual basis. Fundamentally, the Alliance is concerned that the system will prove to be so complex, and so distortive, that it will be unworkable; a phased introduction will mitigate the adverse effects of this to some extent and hopefully allow time for reflective analysis and changes to system design.
52. In complex urban areas where commercial markets span multiple local government geographies, introduction of IL in some areas but not others would lead to effects on investment decisions, potentially encouraging development to locate away from those areas introducing the IL, which could have further distortive effects in the short terms. The Alliance suggests that this could be mitigated to some extent by ensuring rates are set very low in new areas, potentially with a period of stepping up over some years.

ENDS