



## Response to Consultation on the Infrastructure Levy

Wildlife and Countryside Link, Land Use Planning Group, June 2023

### About Wildlife and Countryside Link:

Wildlife and Countryside Link is a coalition of 70 environmental organisations in England, using their strong joint voice for the protection and enhancement of nature.

This Link response is supported by: Amphibian and Reptile Conservation, Bumblebee Conservation Trust, Buglife, CPRE – The countryside charity, Froglife, Open Spaces Society, RSPB, The Wildlife Trusts, Wildfowl and Wetlands Trust, and the Woodland Trust.

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### Covering letter:

Thank you for the opportunity to respond to this consultation on the Infrastructure Levy.

The Link response consists of this covering letter, which highlights our key points and concerns with respect to the Infrastructure Levy consultation, and our responses to the consultation questions below, which were also submitted via the online consultation form.

We welcome the Government's intention through the new Infrastructure Levy to secure funds essential to delivering infrastructure from development.

Developer contributions through Community Infrastructure Levy (CIL) and section 106 payments have been important sources of conservation funding, in particular for essential strategic biodiversity mitigation measures. In our view, it is essential to retain mechanisms to secure strategic biodiversity mitigation measures. We welcome the retention of section 106 agreements in some cases, including for minerals and waste sites, in order to secure site-specific legal agreements for important measures such as biodiversity measures. However, it was not clear in the consultation document whether the 'Delivery Agreements' will also retain the legal status of the section 106 agreements that is vital in securing strategic biodiversity mitigation measures from developers.

### Responses to selected [consultation questions](#):

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

Yes.

Developers should continue to provide certain kinds of ‘integral’ infrastructure outside of the Infrastructure Levy, including infrastructure that is incorporated into the design of the site and offsite infrastructure that is essential to make the proposal acceptable in planning terms, such as strategic biodiversity mitigation measures and wider green infrastructure associated with the development.

We agree with the consultation document’s inclusion of sustainable urban drainage systems and flood and site-specific coastal erosion risk mitigation, biodiversity enhancements, net gain, private amenity space, street trees and onsite green infrastructure, and onsite play areas and open space for residents, as integral infrastructure.

There are other types of essential infrastructure and measures where funding and conditions need to be secured from the developer: strategic biodiversity mitigation measures for protected site and protected species, for example, suitable alternative natural greenspaces (SANGs), and/or mitigation and compensation measures identified for a particular development by an EIA. It would be helpful if explicit reference was made to strategic biodiversity mitigation measures being classified as integral infrastructure.

Also, where an LPA has identified a need to provide green infrastructure within or associated with the development, for example to meet local Green Infrastructure Standards for major development, these green infrastructure contributions should also be classified as integral.

These strategic biodiversity mitigation measures and a development’s contribution to wider green infrastructure should be secured through the targeted use of s106 agreements, or ‘Delivery Agreements’ in the consultation document. These ‘Delivery Agreements’ must retain the current 106 agreement status as a legal contract, as well as secure funds from the developer to deliver these strategic biodiversity measures and green infrastructure required by the LPA.

**Question 3: What should be the approach for setting the distinction between integral and Levy-funded infrastructure? [ see para 1.28 for options a), b), or c) or a combination of these]. Please provide a free text response to explain your answer, using case study examples if possible.**

We welcome further consultation from the Government on the distinction between integral and Levy-funded infrastructure.

We suggest that b) a nationally set list of types of infrastructure could be the best approach to providing clarity and certainty to all involved in the system.

We agree with the consultation document’s suggestion that Levy-funded infrastructure should include flood risk infrastructure, strategic green infrastructure and tree planting/maintenance. The Levy should help fund the strategic green infrastructure needed to help a local authority achieve the area-wide Green Infrastructure Standards set out in the local Green Infrastructure Strategy.

**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? [Yes/No/Unsure] Please provide a free text response to explain your answer where necessary.**

No.

The levy funding should not be used for non-infrastructure items and to fund wider local authority services. Levy funding should not replace adequate long-term funding for local government.

**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.**

Yes.

The levy funding should prioritise infrastructure needs arising from development and should not be used for non-infrastructure items and to fund wider local authority services. Levy funding should not replace adequate long-term funding for local government.

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

We seek reassurance from the Government that the Delivery Agreements under the Core Levy routeway are still legally-binding agreements, as section 106 agreements currently are. This will be necessary to secure legal agreements for strategic biodiversity mitigation measures, as well as the funding required to deliver these measures. While we assume that this is the Government's intention, the consultation document was not clear.

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

Unsure.

The consultation document proposes lowering levy rates for brownfield land to act as incentive for redevelopment relative to greenfield sites, however, some brownfield land is of significant environmental significance and value and this must be taken into account in the Government's proposals. Brownfield sites of high environmental value, for example, sites containing Open Mosaic Habitats on Previously Developed Land (OMHPDL), should not be subject to additional offsets from the Levy.

**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]. Please explain your answer.**

Strongly agree.

A local authority should be able to require the payment of the Levy or a proportion of the Levy prior to site completion. The proposal to allow developers to pay upon site completion puts a borrowing and risk burden on local authorities. We recommend that the Government require provisional levy liability payments to the local authority and that the local authority have the power to enforce it.

This is also essential to ensure that essential nature and biodiversity measures, especially mitigation measures can be put in place and delivered before and/or throughout the delivery of the development, to ensure that the environmental harm of the development is genuinely mitigated.

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

Yes. We feel early payment of the Levy or a proportion of the Levy would be necessary in the case of strategic biodiversity mitigation measures and potentially other required environmental mitigation measures, to ensure these measures are put in place and delivering results early and ahead of the development commencing and resulting harm being done.

**Question 21: To what extent do you agree that the borrowing against Infrastructure Levy proceeds will be sufficient to ensure the timely delivery of infrastructure? [Strongly Agree/Agree/Neutral/Disagree/Strongly Disagree/Unsure]. Please provide a free text response to explain your answer where necessary.**

Disagree.

Borrowing against IL funds is a risk for mostly cash-poor local authorities, and this could risk the early delivery of essential strategic biodiversity mitigation measures. These measures must be provided prior to development commencing, not after completion, to protect designated nature sites from the direct and indirect harm that can arise from new development.

**Question 22: To what extent do you agree that the government should look to go further, and enable specified upfront payments for items of infrastructure to be a condition for the granting of planning permission? [Strongly Agree/Agree/Neutral/Disagree/Strongly Disagree/Unsure] Please provide a free text response to explain your answer where necessary.**

Strongly agree.

Borrowing against IL funds is a risk for mostly cash-poor local authorities, and this could risk the early delivery of essential strategic biodiversity mitigation measures. These measures must be provided prior to development commencing, not after completion, in order to protect designated nature sites from the direct and indirect harm that can arise from new development.

**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 Infrastructure Delivery Strategy should set out the full range of assessed and required strategic biodiversity mitigation measures necessary as a consequence of planned development. The design of measures should be informed by the area's Local Nature Recovery Strategy.

The local authority should also consult the local Green Infrastructure Strategy and the local Joint Strategic Needs Assessment in identifying infrastructure needs.

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

Yes.

We think that the views of the local community should be integrated into the drafting of an Infrastructure Delivery Strategy. Local people often know their local areas and communities best, including holding important local environmental knowledge. Public engagement must actively consult a representative sample of people in the local area to ensure a genuine view of local infrastructure needs. However, the Infrastructure Delivery Strategy must be clear that essential infrastructure needs such as legal requirements for strategic biodiversity mitigation are prioritised and funded.

**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**

We suggest the local authority also consult in the preparation of Infrastructure Delivery Strategies providers of nature-based green and blue infrastructure solutions, such as Government arms' length bodies and nature NGOs.

**Question 29: To what extent do you agree that it is possible to identify infrastructure requirements at the local plan stage? [Strongly Agree/Agree/Neutral/Disagree/Strongly Disagree/Unsure] Please provide a free text response to explain your answer where necessary.**

Agree.

Infrastructure requirements can and should be identified during the local plan stage, including the location, scale and nature of any strategic biodiversity mitigations, nutrient pollution mitigations, and other nature-based green and blue infrastructure necessary to ensure that development meets environmental requirements and addresses environmental issues.

**Question 43: Do you agree that these enforcement mechanisms will be sufficient to secure Levy payments? [Strongly Agree/Agree/Neutral/Disagree/Strongly Disagree/Unsure] Please provide a free text response to explain your answer where necessary.**

Disagree.

While we support the measures proposed by the consultation document, we do not think they alone will be sufficient to ensure enforcement. Declining local authority budgets over the past decade has meant that local authorities do not always have the capacity and resources to actually carry out enforcement. We urge the Government to ensure local authorities are sufficiently funded in order to carry out essential functions, including enforcement.

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

Strongly agree.

We agree that a test and learn approach to implementing the new Infrastructure Levy will be essential to the identification and rectification of any issues in the design of the process.